

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

July 7, 2003

**CALL TO PODIUM:**

Daniel Janousek

**RESPONSIBLE STAFF:**

Daniel Janousek, Long Range  
Planning

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
X	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item  
is a public hearing)

Introduced	
Advertised	05-14-2003
	05-21-2003
Hearing Date	6-02-2003
Record Held Open	7-02-2003
Policy Discussion	7-07-2003

**TITLE:**

**SDP-03-005, Amendment to SDP-3** from 353,201 square feet of previously approved building area to 373,201 square feet of building area. The subject property is located at 317 Kentlands Boulevard, Kentlands, Section 1, Parcel L, Block Q and is bordered by Great Seneca Highway and Kentlands Boulevard. The subject property consists of approximately 33.75 acres of land and is zoned MXD (Mixed Use Development).

**SUPPORTING BACKGROUND:**

Attached are additional exhibits received since the joint public hearing on June 2, 2003, and prior to the closing of the City Council's record on July 2, 2003. These are listed in bold type on the Index of Memoranda.

At their meeting of June 18, 2003, the Planning Commission recommended approval of this SDP amendment to the Mayor and City Council with five (5) conditions. Exhibit 12 contains the Planning Commission's recommended conditions as stated in their CPC memorandum.

The City Attorney has reviewed the resolution of adoption.

**DESIRED OUTCOME:**

**Adopt Resolution.**

**SDP-03-005**  
**Amendment to SDP 3**  
**Saul Centers**  
**317 Kentlands Boulevard**  
**Joint Public Hearing**  
**Index of Memoranda**

**Updated July 2, 2003**

Number	Exhibit
1.	Site Plan Application dated May 12, 2003
2.	Site location map
3.	Site Plan, Landscape Plan and Elevations
4.	Notice of Joint Public Hearing sent to <i>Gaithersburg Gazette</i> on May 13, 2003
5.	Notice of Public Hearing Sent May 15, 2003
6.	Parking Demand Analysis for Kentlands Square Shopping Center, May 13, 2003, prepared by Wells and Associates.
7.	Resolution R-21-92 granting approval for Schematic Development Plan SDP 3, known as Phase III, Section 1 of Kentlands, Phase 1 and 2 of the Beatty Open Center, dated March 2, 1992.
8.	Letter from McGuireWoods, LLP, to Mr. Dan Janousek, Planner, dated June 11, 2003.
9.	Letter from Wheeler & Korpeck, LLC, Attorneys at Law, to Mr. Daniel Janousek, Planner, dated June 13, 2003.
10.	Staff Analysis
11.	Memorandum from Mark Depoe to Planning Commission
12.	Communication: Planning Commission, June 27, 2003
13.	E-mail from Elly Shaw-Belblidia to the Mayor and City Council dated June 27, 2003
14.	E-mail from Nora Caplin to Dave Humpton dated June 27, 2003
15.	E-mail from Richard L. Arkin to the Mayor and City Council dated July 1, 2003
16.	E-mail from Brian O'Looney to Fred Felton dated June 13, 2003
17.	Joint Public Hearing Transcript, June 2, 2003
18.	City Council Minutes, June 2, 2003
19.	Planning Commission Minutes, June 18, 2003
20.	Letter from John Collich to Dan Janousek dated July 1, 2003 (RE: Lowes)
21.	Letter from John Collich to Dan Janousek dated July 1, 2003 (RE: Kentlands Retails, Inc.)
22.	Letter from Wheeler & Korpeck, LLC, Attorneys at Law, to Mr. Daniel Janousek, Planner, dated July 1, 2003.
23.	Reciprocal Easement Agreement (Access, Parking and Utilities)
24.	Letter from Robin P. Nickles to Daniel Janousek, dated July 2, 2003
25.	Letter from John Collich to Dan Janousek dated July 2, 2003

CITY OF GAITHERSBURG  
31 South Summit Avenue

MAYOR AND COUNCIL  
RESOLUTION TO APPROVE

SCHEMATIC DEVELOPMENT PLAN SDP-03-005,  
AN AMENDMENT TO SCHEMATIC DEVELOPMENT PLAN SDP-3  
FROM 353,201 SQUARE FEET OF BUILDING AREA 373,201 SQUARE FEET  
OF BUILDING AREA, LOCATED AT 317 KENTLANDS BOULEVARD,  
SECTION 1, PARCEL L, BLOCK Q, 33.75 ACRES, IN THE MIXED USED  
DEVELOPMENT (MXD) ZONE, GAITHERSBURG, MARYLAND.

**SDP-03-005**

OPINION

This proceeding constitutes an action pursuant to §24-160D of the Zoning Ordinance (Chapter 24 of the Gaithersburg City Code) which permits the Mayor and City Council to review and approve a schematic development plan in the MXD (Mixed Use Development) Zone; and further, §24-160D.10 and 24-160D.11 in which the Mayor and City Council may approve an amendment to a schematic development plan, consistent with the procedures for amendment of optional method plans as provided in §24-198(c) of the City Code.

The subject property, Section 1, Parcel L, Block Q, Kentlands, is located at 317 Kentlands Boulevard, Gaithersburg, Maryland, in the MXD (Mixed Use Development) Zone.

OPERATIVE FACTS

The subject parcel is in Kentlands, located at 317 Kentlands Boulevard, bordered by Great Seneca Highway and Kentlands Boulevard, and consists of approximately 33.75 acres of land.

In March of 1992, the Mayor and City Council adopted Resolution No. R-21-92 approving Schematic Development Plan SDP-3, identified as Phase III, Section I of Kentlands, Phases 1 and 2 of the Beatty Open Center. SDP-3 was the first commercial center in the Kentlands community. SDP-3 included 344,977 square feet of retail building area and 27,574 square feet of garden center area.

A joint public hearing was held on schematic development plan SDP-03-005 on Monday, June 2, 2003, before the Mayor and City Council and Planning Commission. This plan is an amendment to schematic development plan SDP-3 approved on March 2, 1992. The hearing had been advertised in the *Gaithersburg Gazette* on May 14, 2003 and May 21, 2003, with the required parties given notice and the property posted per §24-196 of the City Code.

The Mayor and City Council and Planning Commission have reviewed the amendment to the schematic development plan submitted by the applicant and the

evidence of record. The Schematic Development Plan, as submitted, requested a change in land use from 353,201 square feet of building area 373,201 square feet of building area.

The site plan includes four single-story buildings totaling 20,000 square feet of retail/commercial land use located within the existing parking area to the west of the existing retail building on Parcel "L". Two of the buildings are proposed to be connected via a covered walkway (buildings B&C), while the other two buildings are stand alone. The intent of the placement of the buildings is to create a 'street edge'.

The building material is brick and EFIS (Exterior Finish Insulation System), and the plan includes a complete landscape plan.

At the June 2, 2003 Joint Public Hearing, the Planning Commission voted unanimously to close their record in eleven days, on June 13, 2003, and the City Council voted unanimously to close their record in thirty days, on July 2, 2003.

The Planning Commission, at their regular meeting of June 18, 2003, reviewed the complete record and voted to recommend approval of SDP-03-005 to the City Council with five (5) conditions as stated in Exhibit 12 of the record.

Staff would like to the applicant to develop the entire plan at once; however, given the complexities of the reciprocal easement agreement between adjacent property owners and other landlord/tenant issues, it is expected that up to 6,000 sq. ft. will be constructed first on pad site "B" and the remaining square footage up to a total of 20,000 square feet will be constructed during a second phase.

### FINDINGS

The City Council has reviewed the evidence of record in Schematic Development Plan SDP-03-005 per §24-160 D.10 and agrees with the findings and recommendations of the City Planning Commission and accordingly, finds:

1. The plan meets or accomplishes the purposes, objectives and minimum standards and requirement of the MXD zone as stated in §24-160 D.1.
2. The plan will be internally and externally compatible and harmonious with existing and planned land uses in the area in terms of the nature and use and its interrelationship with the commercial uses within the Kentlands area.
3. The architectural features are compatible with the adjacent development in the Kentlands area.
4. The existing public facilities are adequate to service the proposed development.

5. A parking study has been provided to and reviewed by the Mayor and City Council and the Planning Commission that includes all uses in the schematic development plan area. The Mayor and City Council have determined that the appropriate approximate number of parking spaces is 1,683 parking spaces for the schematic development plan and that a shared parking agreement between the owners of Parcel 'K' and Parcel "L" does exist. The Mayor and Council have further determined that at the time of final site plan approval the Planning Commission shall determine the final number of spaces, based upon considerations of safety, convenience, pedestrian and vehicular circulation, and added landscaping within parking lot areas. In addition the Planning Commission may reduce the number of spaces required for any use in Article XI, section 24-219(b) of the City Code where such reduction will meet the purposes of the MXD Zone.

### CONCLUSION

Upon consideration of all the evidence pertaining to Schematic Development Plan SDP-03-005, an amendment to SDP-3, the City Council concludes that the applicant has met the burden of proof that Schematic Development Plan SDP-03-005 meets the requirements of the MXD zone.

### SCHEMATIC DEVELOPMENT PLAN (SDP-03-005)

### RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Gaithersburg, on July 7, 2003, that Schematic Development Plan SDP-03-005 is hereby approved subject to the following conditions:

1. Applicant is to continue to work with staff on the final building layout and architectural design as well as the type and location of building signage. The final building layout, design, elevations and building signage are to be approved by the Planning Commission;
2. Applicant is to remove the access drive between Buildings D & E to provide an additional pedestrian-friendly plaza;
3. Applicant is to provide additional landscaping around the proposed buildings and pedestrian plazas between Buildings C & D and Buildings D & E for Planning Commission approval;
4. Applicant is to continue to work with staff on the streetscape design including the street widths, sidewalk widths, street trees, plating strips, and sidewalk locations. The final streetscape design is to be reviewed and approved by the Planning Commission during the final site plan

process;

5. Before the granting of any parking waivers, the applicant is to execute a shared parking agreement that accommodates the off-site parking per the parking waiver request;
6. Applicant to Submit Mylars for SDP prior to Final Site Plan Submission;
7. The Planning Commission may approve any reasonable request to reduce the required parking where such reduction will meet the purposes of the MXD Zone and;
8. Applicant may construct up to 6,000 square feet of development on pad site "B" after site plan approval and up to a total of 20,000 during a second phase of development.

ADOPTED by the City Council of the City of Gaithersburg on the 7th day of July, 2003.

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THIS IS TO CERTIFY that the foregoing resolution was adopted by the City of Gaithersburg Mayor and City Council in a public meeting assembled on the 7th day of July 2003.

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David B. Humpton  
City Manager

McGuireWoods LLP  
7 Saint Paul Street  
Suite 1000  
Baltimore, MD 21202-1671  
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Fax: 410.659.4599  
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McGUIREWOODS

Patrick M. Shelley  
Direct Dial: 410.659.4413  
Direct Fax: 410.659.4527  
pshelley@mcguirewoods.com

June 11, 2003

By: Federal Express and Facsimile  
Mr. Daniel Janousek  
Planner, Planning and Code Administration  
Department of Long Range Planning  
City Hall  
31 S Summit Ave  
Gaithersburg, MD 20877

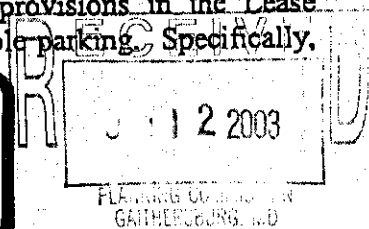
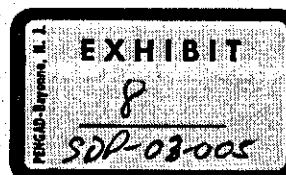
Re: Amendment to schematic development plan SDP-03-005 known as Kentlands Section 1, Parcel L, Block Q, located at 317 Kentlands Boulevard, seeking a 20,000 square foot increase in building area and the elimination of 150 available parking spaces (the "Amendment").

Dear Mr. Janousek:

I write you today as the representative of Lowe's Home Centers, Inc. ("Lowe's"), which currently operates a store in the Kentlands Square Shopping Center (the "Shopping Center") pursuant to a lease dated July 15, 1991 between Lowe's and the landowner (the "Lease"). The above referenced Amendment request has recently come to Lowe's attention. As one of the largest tenants in the Shopping Center, Lowe's strongly objects to the Amendment as the same is impractical, insufficiently justified and contrary to the terms of the Lease which precludes the contemplated reduction in parking.

As you are aware, the Amendment contemplates the elimination of 150 currently existing parking spaces serving the Lowe's store in the Shopping Center while at the same time adding 20,000 square feet of new restaurant and retail space. By removing 150 existing spaces, while at the same time adding 20,000 square feet of new restaurant and retail space, the Amendment would bring the available off-street parking 226 spaces below that which is required by Section 24-218 of the Code of Ordinances of the City of Gaithersburg, Maryland.

Irrespective of the analysis prepared by the applicant's consultants, Lowe's practical experience in operating in the Shopping Center suggests that the proposed parking reduction will have significant and harmful effects on the safety and operation of the parking lot. In fact, these objective concerns were, in part, the reason for the insertion of provisions in the Lease precluding the landowner from making such a reduction in the available parking. Specifically,

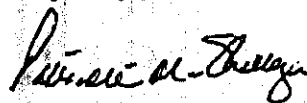


the Lease provides that "[t]he parties agree that Landlord shall not change any of the Common Area Parking, Primary Parking, access or other Common Facilities, such as lighting and drainage, without the express written permission of Tenant in advance of such a change." Lowe's has not provided any such permission for the contemplated drastic change to the Shopping Center.

I apologize that these comments were not able to be delivered at the June 2, 2003 public hearing. Unfortunately, we did not become aware of the impending Amendment until after the conclusion of the public hearing.

Lowe's strongly opposes the reduction in parking proposed by the Amendment, and is prepared to enforce its rights under the Lease to prevent the implementation of the Amendment by the landowner. If you have any questions at all about this matter, I can be reached at the number shown above.

Very truly yours,



Patrick M. Shelley

cc: Saul Holdings Limited Partnership  
7501 Wisconsin Avenue, Suite 1500  
Bethesda, Maryland 20814-6522

# McGUIREWOODS

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No. of Pages (including Fax cover sheet): 3

DATE: June 12, 2003

If all pages are not received, please call the Fax Operator indicated below.

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TO: Daniel Janousek  
Planner, Planning and Code Administration  
Gaithersburg, MD

PHONE NUMBER:

FAX NUMBER 301-258-6336

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FROM: Patrick M. Shelley, Esquire  
McGuireWoods LLP  
Suite 1000  
Seven St. Paul Street  
Baltimore, Maryland 21202

PHONE NUMBER: 410-659-4413

FAX NUMBER: 410-659-4527

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RE: Lowe's Home Centers, Inc./Gaithersburg, MD

REMARKS: Letter attached.

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This Fax is intended for the recipient indicated above. It may be confidential or protected from disclosure by the attorney-client privilege or work-product doctrine. If you have received this Fax in error, please mail it to: McGuireWoods, LLP, Suite 1000, Seven St. Paul Street, Baltimore, Maryland 21202. We will reimburse you for your postage. Thank you.

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Sender Name: Dottie Myers

Telephone No.: 410-659-4507

Charge No.: 2006630.0177

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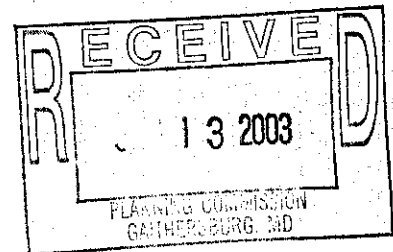
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June 11, 2003

**By: Federal Express and Facsimile**  
Mr. Daniel Janousek  
Planner, Planning and Code Administration  
Department of Long Range Planning  
City Hall  
31 S Summit Ave  
Gaithersburg, MD 20877



Re: Amendment to schematic development plan SDP-03-005 known as Kentlands Section 1, Parcel L, Block Q, located at 317 Kentlands Boulevard, seeking a 20,000 square foot increase in building area and the elimination of 150 available parking spaces (the "Amendment").

Dear Mr. Janousek:

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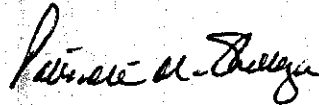
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Very truly yours,



Patrick M. Shelley

cc: Saul Holdings Limited Partnership  
7501 Wisconsin Avenue, Suite 1500  
Bethesda, Maryland 20814-6522

WHEELER & KORPECK, LLC

WILLIAM T. WHEELER  
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June 13, 2003

Hand Delivered

Mr. Daniel Janousek, Planner  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, MD 20877-2098

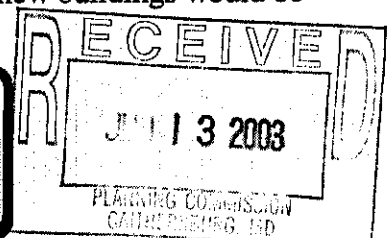
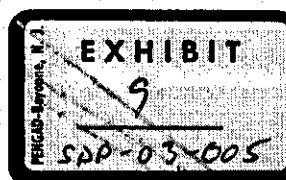
Re: Testimony – Joint Public Hearing – June 2, 2003  
SDP-03-004  
SDP-03-005

Dear Mr. Janousek:

This office represents Kentlands Retail, Inc., one of the owners at the Kentlands Square Shopping Center as regards the requested expansion of Saul Properties at Kentlands Square referenced above. This letter constitutes our testimony for the Planning Commission record which stems from the June 2, 2003 public hearing referenced above. We will be submitting additional testimony for the Mayor and Council's record prior to July 2, 2003.

Our first area of concern is the parking issue. As regards SPD-03-005, Saul Properties indicated that they expect to eliminate 320 parking spaces on the Lowe's parking lot. Their plan was to "train customers to park at Kmart and across from Giant". To our knowledge, there has been no discussion with Kentlands Retail, Inc., the owner of the Kmart parking lot, about the impact of this proposed development. Even though there may be cross parking easements within the shopping center, there are issues of maintenance, liability and allocation of square footage for future development among the different owners which should be more fully discussed and addressed.

The second issue is the congestion of the entrance street between Mattress Discounters and O'Donnell's restaurant where the four proposed new buildings would be



WHEELER & KORPECK, LLC

Mr. Daniel Janousek, Planner

June 13, 2003

Page 2

located. Congestion would be inevitable especially if parallel parking was permitted on the main entrance way in front of the four proposed buildings.

Our third issue relates to the visibility of the Kentlands Square Shopping Center. The Center is difficult to see as it is and does not have high visibility in the community due to sign regulations. The addition of this proposed new development would block the visibility of the Kentlands Retail, Inc. tenants from one of the main entranceways into the Shopping Center.

We look forward to working with the City of Gaithersburg in hopes that these issues can be amicably addressed.

Very truly yours,

WHEELER & KORPECK, LLC

By: 

Roger K. Bain

RKB:lek

cc: Leslie Ries, Esq. (by Mail)  
Jeanine Wolfe (by Fax 443-543-0191 and Mail)

## COMMUNICATION: PLANNING COMMISSION

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**MEMORANDUM TO:** Planning Commission

**FROM:** Daniel Janousek, AICP

**DATE:** June 18, 2003

**SUBJECT:** SDP-03-005 -

The request is to amend the approved schematic development plan **SDP 3**, Section 1, Parcel L, Block Q, from 353,201 square feet of building area 373,201 square feet of building area in accordance with §24-160D.11 and §24-198(c) of the City Code. The subject property is located at 317 Kentlands Boulevard, Kentlands, Section 1, Parcel L, Block Q and is bordered by Great Seneca Highway and Kentlands Boulevard. The subject property consists of approximately 33.75 acres of land and is zoned MXD (Mixed Use Development).

**APPLICANT:**

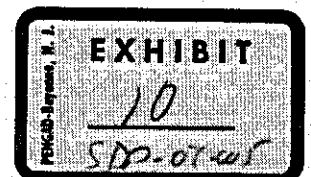
Saul Holdings Limited Partnership c/o Saul Centers  
7501 Wisconsin Avenue  
Bethesda, MD 20814

**OWNER:**

Saul Holdings Limited Partnership  
7501 Wisconsin Avenue  
Bethesda, MD 20814

**REQUEST:**

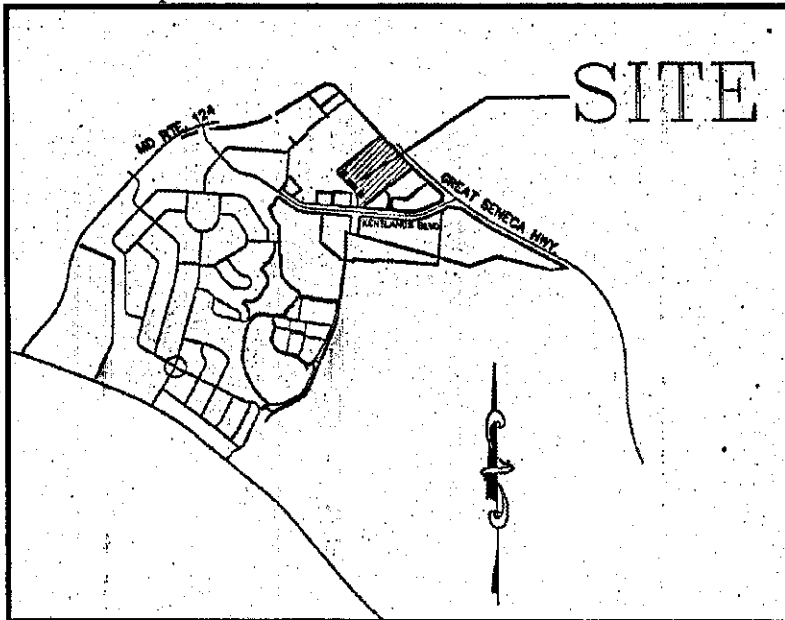
The applicant, Saul Holding Limited Partnership c/o Saul Center, requests to modify SDP 3 (approved March 2, 1992) by adding 20,000 square feet of retail/commercial land use in four one-story buildings to an existing retail/commercial site. The amendment proposes a change to the existing parking space layout and the total number of parking spaces for the retail center area which includes Parcel A, B, C K and Parcel L.



## LOCATION:

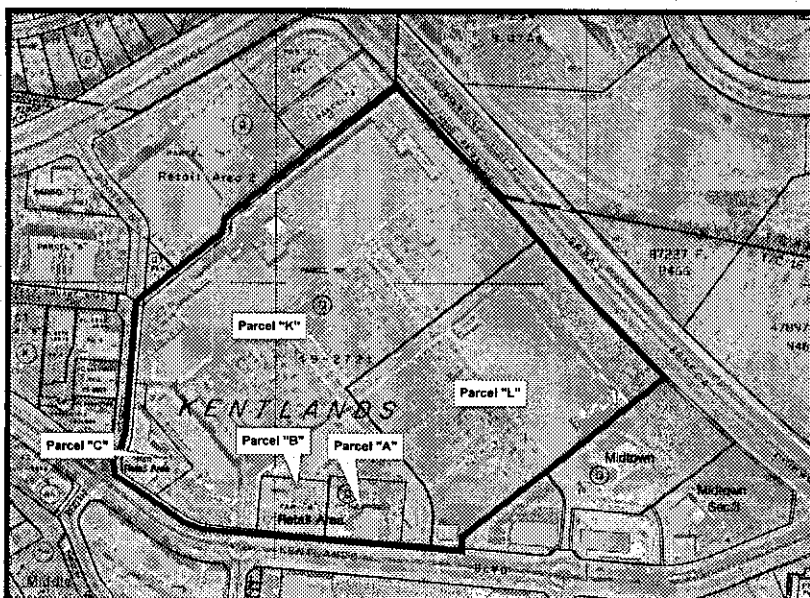
The subject property for the proposed amendment to add 20,000 square feet of additional retail and restaurant land use is located at 317 Kentlands Boulevard, Section 1, Parcel L, Block Q and is bordered by Great Seneca Highway and Kentlands Boulevard. Parcel L, Block Q consists of approximately 11.46 acres of land.

*Location Map – SDP-03-005*



Other properties included in the amendment in regards to parking include Parcel A, Parcel B, Parcel C and Parcel K. The subject properties combined consist of approximately 33.75 acres of land and they are zoned MXD (Mixed Use Development).

*Location Map – Parcels A; B; C; K; and L*



The properties have a Commercial/Industrial-Research –Office land use designation.

**TAX MAP REFERENCE:**

Tax Map: Tax Map FS13  
Tax ID Number: 03203494 (For Parcel L, Block Q)

**BACKGROUND:**

In March of 1992, the Mayor and City Council adopted Resolution No. R-21-92 approving Schematic Development Plan SDP-3, identified as Phase III, Section I of Kentlands, Phases 1 and 2 of the Beatty Open Center.

SDP-3 included 344,977 square feet of retail building area and 27, 574 square feet of garden center area. The plan was approved with the findings that it “focused attention on producing a mid-sized retail center strongly linked to future development in the adjacent Midtown of Kentlands with attention focused on a quality and scale of development conducive to pedestrian accessibility.” SDP-3 was the first commercial center in the Kentlands community.

A final site plan (K-977) was submitted and approved by the City of Gaithersburg in 1992. This final site plan included the planned development submitted consistent with the original SDP-3 application.

Subsequent to the original approval of the final site plan (K-977) the retail center plan was amended in 2000 (AFP-004). Amendment AFP-004 included the addition of a 3,000 square foot building (now Mattress Discounters) located on Kentlands Boulevard and shown on the current application (SDP-03-005) as “Existing Building A”.

The applicant filed SDP-03-005 with the Planning and Code Administration on May 12, 2003. A joint public hearing was held by the Mayor and City Council and the Planning Commission on June 2, 2003. The Planning Commission held the record open for 11 days, to close on June 13. A recommendation on SDP-03-005 is scheduled to be made to the City Council at the Commission’s June 18, 2003, meeting. The City Council will hold their record open for 30 days, to close on July 2, 2003 and the City Council is expected to discuss the application on July 7, 2003.

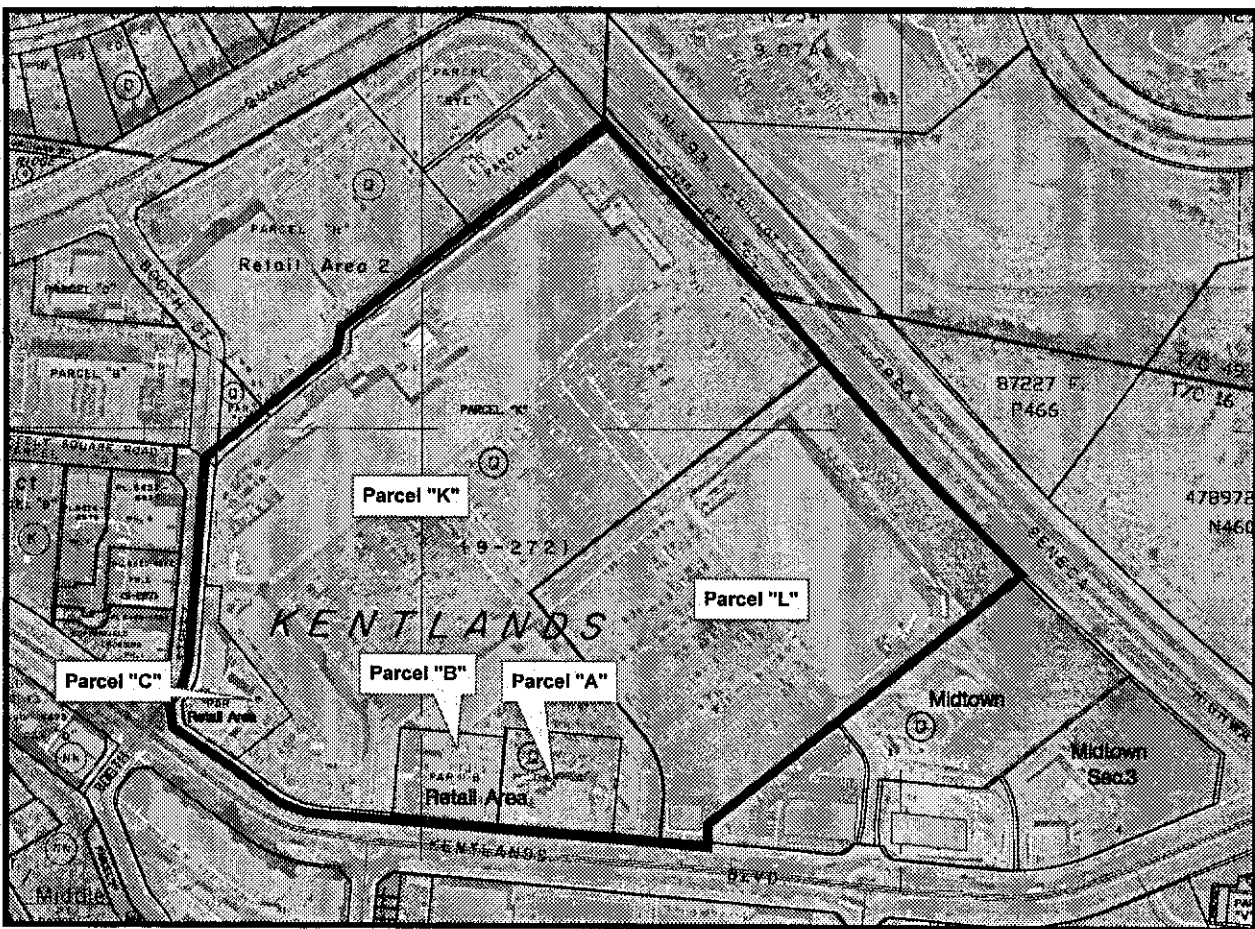


## EXISTING LAND PHYSICAL CHARACTERISTICS:

The properties within the site are currently developed with several retail buildings which contain a mix of retail and restaurant land uses. Most of the area is either building area or parking area. Green space on the site area is located mostly within the parking and around the edge of the developed area.

There are three 'anchor' buildings within the retail area. These buildings are currently occupied by Giant, K-Mart and Lowes. Parcel "L" contains Lowes. To the east of the retail area is Great Seneca Highway and the Quince Orchard Park development. To the south is the Market Square area of Kentlands. Located to the west is a residential area of Kentlands.

*2002 Photograph of SDP-03-005 Area with Parcel Lines*



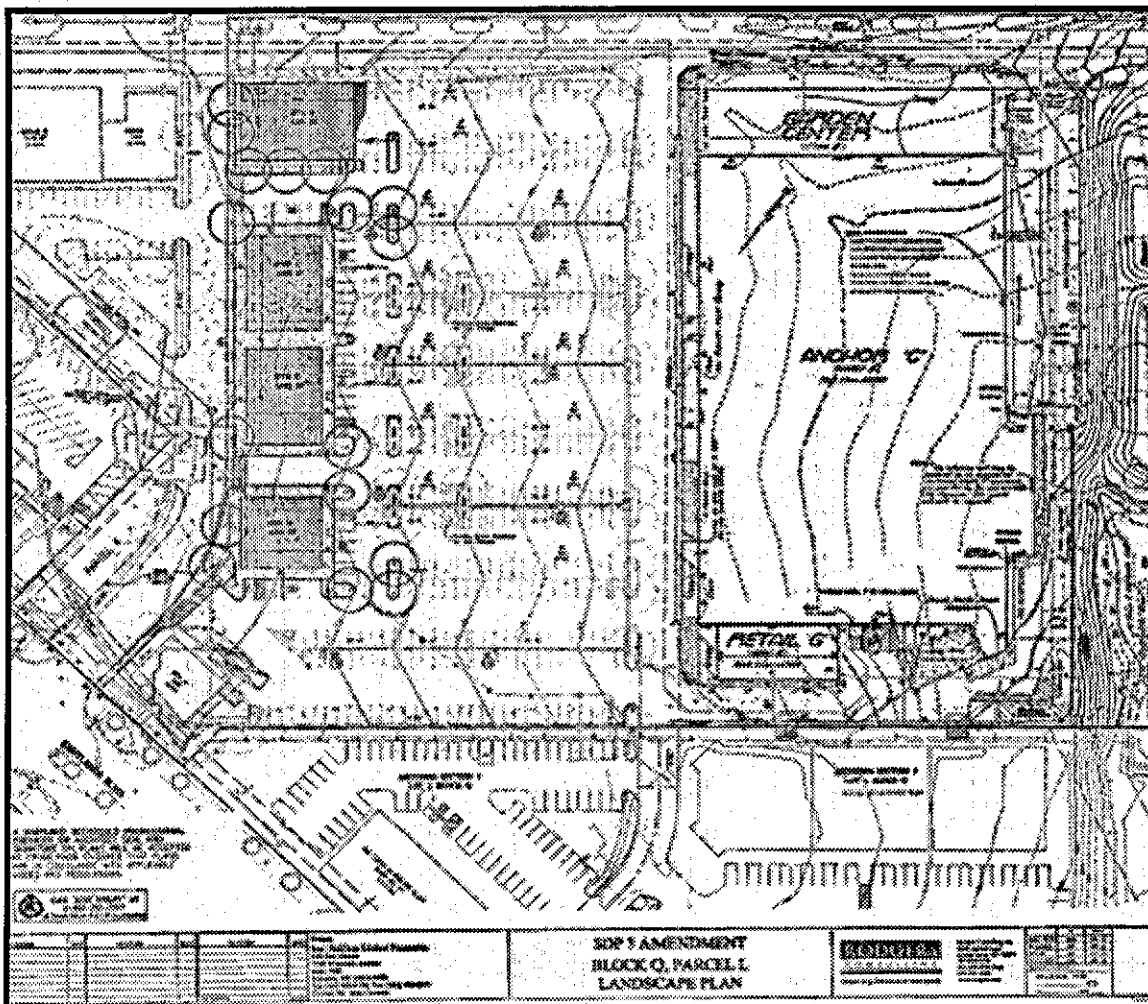
## **PROPOSED USE:**

### **Land Use**

The application proposes the addition of 20,000 square feet of retail/commercial land use within four single-story buildings (shaded areas) located within the existing parking bay area on Parcel "L". Two of the buildings are proposed to be connected via a covered walkway (buildings B&C), while the other two buildings are complete stand alone structures. All four of the buildings are proposed to be located on Parcel "L".

The intent of the placement of the buildings is to create a 'street edge' and to introduce a commercial destination to the perceived underutilized portion of an existing parking lot. The proposed use is consistent with much of the commercial uses within the Kentlands and Lakelands area as it now exists. The proposed buildings are not consistent with the recently development buildings on Kentlands Boulevard on Lots 2 and 3 in Midtown, Kentlands.

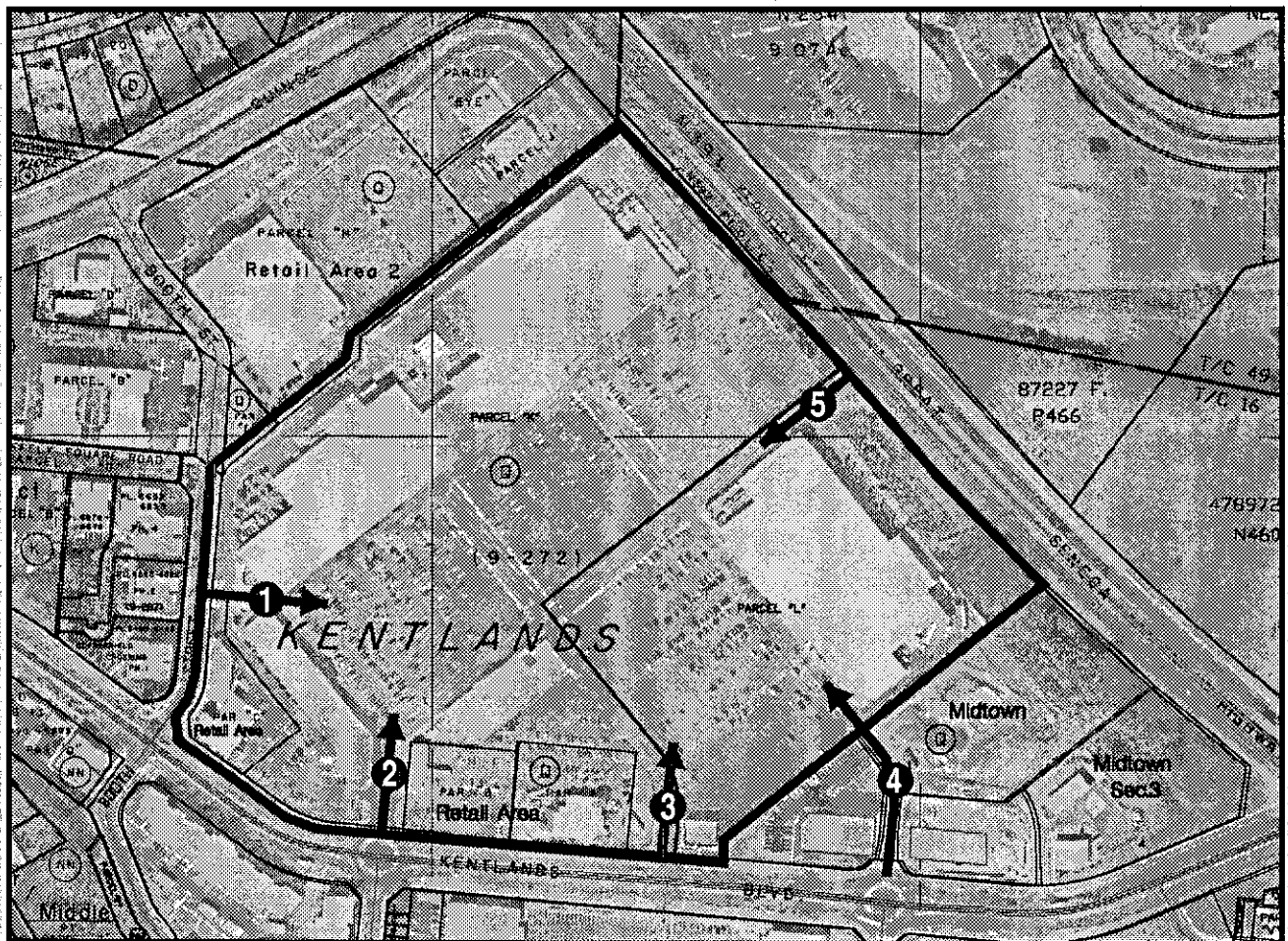
### ***Site Plan - SDP-03-005***



## Vehicular, Pedestrian and Bicycle Circulation/Connections

Parking and vehicular circulation is currently shared with between all of the retail/commercial/restaurant land uses within the development. Access to the site is made from 5 locations, on from the Booth Street (west), three from Kentlands Boulevard (south), one from Great Seneca Highway (east). Vehicular circulation within the site varies from parking bay to parking bay. Generally, vehicular circulation occurs along the main drive aisles band between the main access points (1-5).

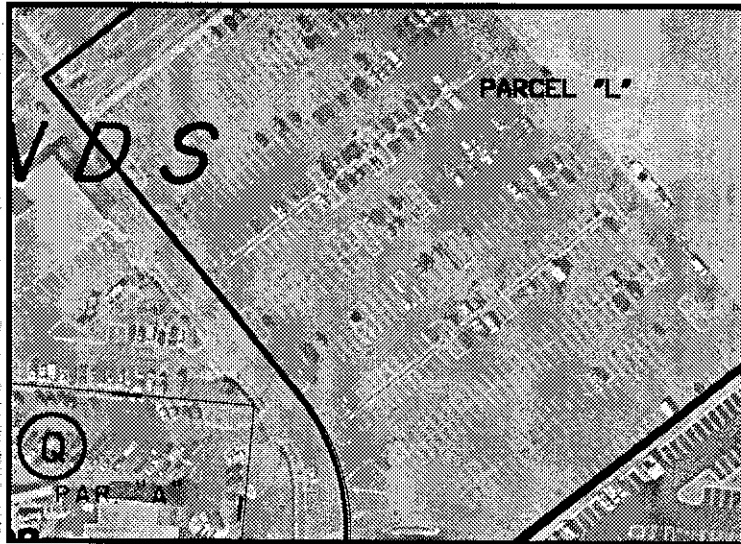
*2002 Photograph of SDP-03-005 Site Area indicating access point 1-5*



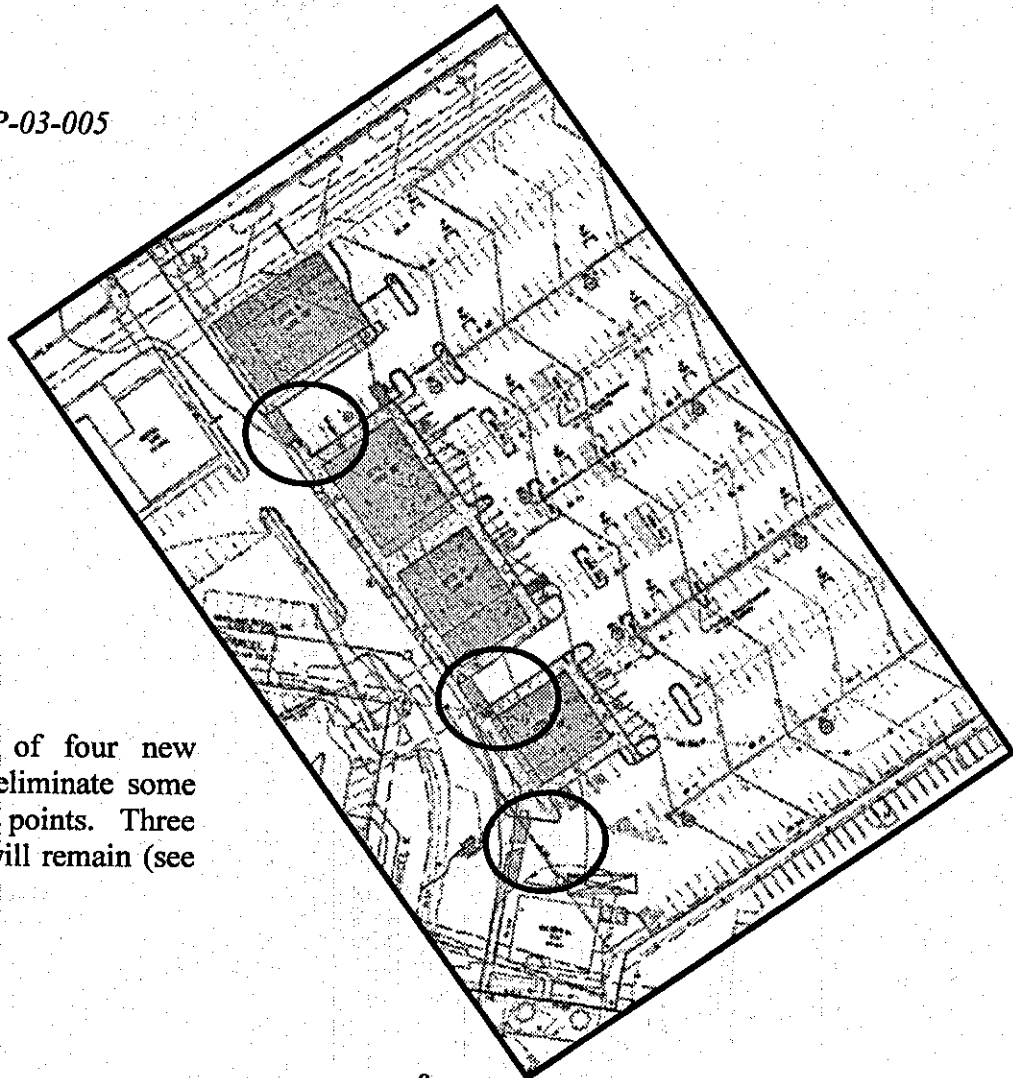
Pedestrian circulation occurs mainly along the main drive aisles which are lined with sidewalks and green strips that contain a minimal amount of landscaping. Pedestrian circulation also occurs within the parking fields, and pedestrians can access the development from all sides. Parcel "L" is surrounded on the east and south by Kentlands Boulevard and Great Seneca Highway, which are both four lane roads.

Along the western edge of the property, and in the location of the proposed buildings, Parcel L currently has eight access points. The access points are located along the main drive aisle from Kentlands Boulevard (see figure below).

*Existing Parking Lot on Parcel "L"*



*Site Plan – SDP-03-005*



The inclusion of four new buildings will eliminate some of these access points. Three access points will remain (see figure at right).

## Parking

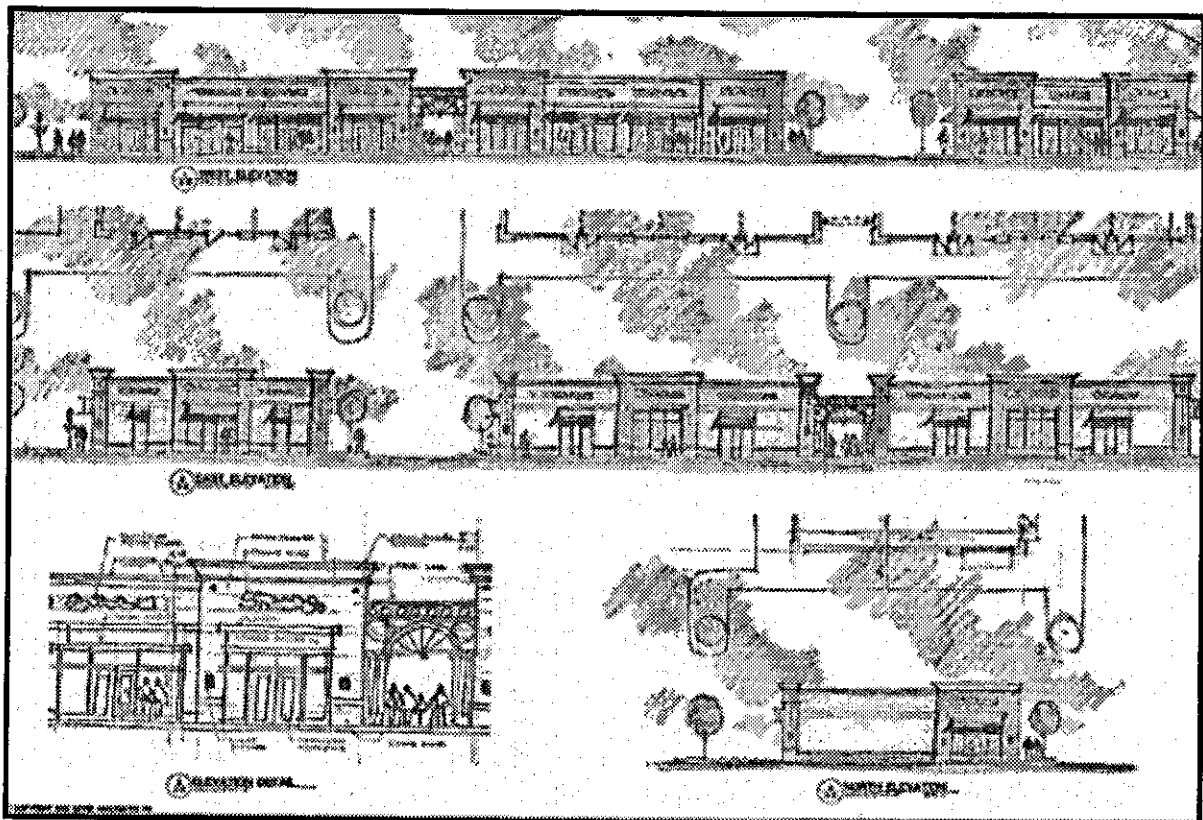
The proposed plan includes a change to the number of existing parking spaces. Currently, the entire site area is parked at a ratio of 5 parking spaces for each 1000 square feet of net leasable building area. The garden centers are parked at a different ratio which is 1 parking space per employee plus 1 space for each 300 square feet of inside garden center area, and 1 space for each 1000 square feet of outside garden center area. The total number of required parking spaces parked at the above calculations is 1,909 spaces.

Due to the addition of 20,000 square feet of retail/commercial land use within the existing parking area, the applicant proposes a reduction of 226 parking spaces for the site area resulting in the provision of 1,683 parking spaces. This overall reduction in parking spaces will result in a waiver request by the applicant for 226 parking spaces.

## Architecture

The architecture for the proposed development is four sided. According to the architect the architecture was modified to be compatible with architectural styles found in the surrounding retail development and the Market Square area. There are variations in height and form with a sign band running along the length of the buildings. Two of the buildings (C & D) are joined by a decorative archway.

### *SDP-03-005 Elevations*



### Landscape Features

The plan includes a landscape plan that incorporated shade trees.

### Public Record

The record for this proposed development plan was held open until June 13, 2003. On June 12, staff received correspondence from a retailer within the development who raised concerns about the reduction of parking on their retail site. On June 13, staff received correspondence from an adjacent property owner who voiced concerns about parking, entrance congestion, and visibility.

### REQUIRED FINDINGS:

#### DIVISION 19. MXD ZONE, MIXED USE DEVELOPMENT

\* \* \*

Sec. 24-160D.10. Findings required.

- (b) The city council shall approve a schematic development plan only upon the finding that:
  - (1) The plan is substantially in accord with the approved sketch plan; and
  - (2) The plan meets or accomplishes the purposes, objectives and minimum standards and requirements of the zone; and
  - (3) The plan is in accord with the area master plan and any accompanying special condition or requirements contained in said master plan for the area under consideration; and
  - (4) The plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned area and adjacent areas; and
  - (5) That existing or planned public facilities are adequate to service the proposed development contained in the plan; and
  - (6) That the development staging or phasing program is adequate in relation to the provision of public facilities and private amenities to service the proposed development; and
  - (7) That the plan, if approved, would be in the public interest.

### **STAFF RECOMMENDATION:**

Staff finds that the application does not comply with the requirements of the MXD Zone, Division 19 of the City Zoning Ordinance.

Staff recommends that the Planning Commission recommend DENIAL OF SDP-03-005, an amendment to SDP-3, to the Mayor and City Council, as it does not comply with Section 24-160D.10 (b) of the Zoning Ordinance:

The intent of the development plan is to develop a street edge lined with buildings that will improve vehicular circulation and provide a pedestrian realm. The proposed development is compatible with much of the existing commercial development in the Kentlands Square Shopping Center and Market Square in terms of its architectural design (single story buildings) and variation in building height. But the applicant has not shown that this proposed plan creates a superior street edge development.

Staff is concerned that this development plan application does not encourage an orderly, staged large-scale development that is comprehensively planned. There is no existing comprehensive plan for the development of this area other than the approved schematic development plan (SDP-3), which currently does not account for any new development. It appears that the proposed plan is not part of a phased or staged development. The plan should also provide some type of community amenity such as additional green space other than that which has been proposed.

The proposed development plan does not appear to provide a superior quality of development that would exceed that which could be achieved under conventional zoning regulations and procedures. Given the flexibility of the MXD Zone, there appears to be opportunities to improve the plan in terms of land use, pedestrian and vehicular circulation, architecture, building placement, and public amenities.

However, staff does recommend that the applicant work closely with the other land owners, and interested parties (including Kentlands and Lakelands community associations) in order to devise an improved plan that meets the objectives of the MXD Zone and fulfills the desires and needs of the Kentlands and Lakelands communities and the City as a whole.

MEMORANDUM TO: Planning Commission

FROM: Mark DePoe, Long-Range Planning Director *MD*

DATE: June 18, 2003

SUBJECT: SDP-03-005 Staff Analysis and Recommendation

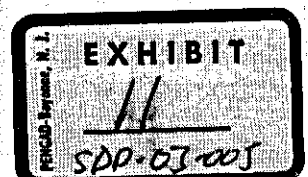
After the staff report for SDP-03-005 was completed and distributed, the applicant met with staff in regards to the staff analysis and recommendation, the design of the proposed plan and buildings, and the requested parking waiver.

At this meeting, staff conveyed its concerns with the streetscape design, including the street widths, on-street parallel parking spaces, sidewalk widths, street trees, green space, and sidewalk locations. Staff recommended that the sidewalk widths along the main access drive be widened and that the applicant provide additional pedestrian/customer-friendly plazas. These two improvements will provide for more pleasant and active areas throughout the plan and allow for additional pedestrian space and potential outside seating for restaurant uses. Staff further recommended that the applicant provide additional landscaping and green space throughout the site which staff feels is an improvement to the traditional hardscape design of the retail center. In an effort to provide the additional plaza and green space, staff recommended that the access drive between the proposed buildings 'D' and 'E' be eliminated.

The applicant and staff discussed the building architecture and signage as well as the exact location of the buildings and the on-street parking; however, further discussion of these issues is still required and should be part of the final site plan review of the Planning Commission.

In addition to the site design issues, staff had concerns with the requested parking waiver. The waiver request implies that, if needed, additional parking is provided through a joint parking and access easement between the subject property (Parcel L) and the adjacent property (Parcel K). The applicant should work with the property owners of Parcel K as to whether the proposed parking waiver affects the existing joint parking and access easement agreement. Since an approval to a parking waiver request is done at the final site plan stage, this requirement can be completed during the process and review of the final site plan by the Planning Commission.

Due to the meeting with the applicant and the applicant's favorable response to staff's suggestions, staff has reconsidered its recommendation of denial and



feels that the plan may be recommended for approval if the following conditions are applied:

1. Applicant continue to work with Staff on the final building layout and architectural design and the type and location of building signage. Final building layout, design, and elevations and building signage to be approved by the Planning Commission.
2. Applicant remove the access drive between buildings 'D' and 'E' to provide an additional pedestrian-friendly plaza.
3. Applicant provide additional landscaping around the proposed buildings and the pedestrian plazas between buildings 'C' and 'D' and buildings 'D' and 'E' to be approved by the Planning Commission.
4. Applicant continue to work with Staff on the streetscape design, including the street widths, sidewalk widths, street trees, planting strips, and sidewalk locations. The final streetscape design to be reviewed and approved by the Planning Commission during the final site plan process.
5. Prior to the granting of any parking waivers, the Applicant is to execute a shared parking agreement that accommodates the off-site parking per the parking waiver request.

In addition, Staff views this development proposal as an infill retail project and not as a redevelopment vision for the Kentland Square shopping area. At such time a redevelopment plan for the entire Kentland Square shopping area is proposed, these buildings should be viewed as expendable infill development.

If you have any question, please call me at 301-258-6313 ext. 123. Thank You.

**COMMUNICATION: PLANNING COMMISSION**

**MEMORANDUM TO:** Mayor and City Council

**VIA:** David Humpton, City Manager

**FROM:** Daniel Janousek, Planner

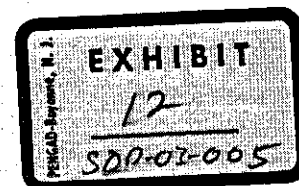
**DATE:** June 27, 2003

**SUBJECT:** SDP-03-005 - Saul Holding Limited Partnership c/o Saul Center  
Amendment to approved Schematic Development Plan  
SDP-3, Kentlands Section 1, Parcel L/Block Q, from  
353,201 SF of building area to 373,201 SF of building  
area, in accordance with §24-160D.11 and §24-198(c) of  
the City Code. The subject property is located at 317  
Kentlands Boulevard, bordered by Great Seneca Highway  
and Kentlands Boulevard. The subject property consists  
of approximately 33.75 acres of land and is zoned MXD  
(Mixed Use Development).

At its regular meeting on June 18, 2003, the Planning Commission made the following motion:

Commissioner Levy moved, seconded by Commissioner Winborne, to recommend SDP-03-005 for approval to the Mayor and City Council, with the following conditions:

1. Applicant is to continue to work with staff on the final building layout and architectural design as well as the type and location of building signage. Final building layout, design, elevations and building signage are to be approved by the Planning Commission;
2. Applicant is to remove the access drive between Buildings D & E to provide an additional pedestrian-friendly plaza;
3. Applicant is to provide additional landscaping around the proposed buildings and pedestrian plazas between Buildings C & D and Buildings D & E for Planning Commission approval;



4. Applicant is to continue to work with staff on the streetscape design, including the street widths, sidewalk widths, street trees, planting strips, and sidewalk locations. The final streetscape design is to be reviewed and approved by the Planning Commission during the final site plan process; and
5. Before the granting of any parking waivers, the applicant is to execute a shared parking agreement that accommodates the off-site parking per the parking waiver request.

Vote: 5-0

SDP-03-004  
SDP-03-005

**From:** Mary Beth Smith  
**To:** Felton, Fred; Humpton, David B.; Stokes, Doris  
**Date:** 6/27/03 11:33AM  
**Subject:** Fwd: Saul project in Kentlands

&gt;&gt;&gt; &lt;Mirinor@aol.com&gt; 06/27/03 10:54AM &gt;&gt;&gt;

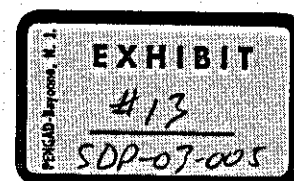
To the City Council:

I'm writing regarding the proposed new section of retail and office space that is being considered for construction near Lowe's in Kentlands (Saul Company, I believe).

If this building goes in, I hope that its location would keep open the possibility for future infill of the parking areas over there and for the possibility of a light rail (CCT) stop. We may need to back up a few steps and reconsider the project.

Thank you for your attention.

Elly Shaw-Belblidia  
340 Tschiffely Sq. Rd.  
Gaithersburg, MD 20878



**Dan Janousek - Proposed Saul shops at Kentlands**

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**From:** Nora Caplan <nhcpalan@webtv.net>  
**To:** <dhumpton@ci.gaithersburg.md.us>  
**Date:** 06/27/2003 2:03 PM  
**Subject:** Proposed Saul shops at Kentlands

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Square

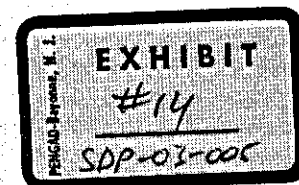
Dave, I didn't realize the proposed SDP-4 & 5? Saul shops at Kentlands Square had moved so far along the approval stage. I dislike the whole concept, location and design of what would be another unattractive, unnecessary, and unoriginal strip mall and feel it does not fit in with our New Urbanism vision.

We're at a critical stage in planning Kentlands' Midtown section. I regret to say that I've been very disappointed with Market Square and some of the Kentlands Square Shopping Center. I'm sure you're aware of how most if not all Kentlands residents are, too. I would like to urge the Mayor and Council to refrain from a decision about the Saul plans at this time. If it's too late to voice my opposition to the Planning Commission. I would like to ask the Mayor and Council for an extension of time for Saul to come up with a far better plan for their property. The developer needs to have some open meetings with the community if it wants to succeed in Kentlands.

Thank you very much for passing along these comments to the Planning Commission and/or the Mayor and Council.

Sincerely,

Nora H. Caplan  
102 Booth Street, 16  
Gaithersburg, MD 20878



**From:** Mary Beth Smith  
**To:** Felton, Fred; Humpton, David B.; Stokes, Doris  
**Date:** 7/1/03 8:29AM  
**Subject:** Fwd: Request to keep record open on SDP-03-004 and SDP-03-005

>>> <RichardArkin@aol.com> 06/30/03 10:28PM >>>  
Your Honor and Members of the Council:

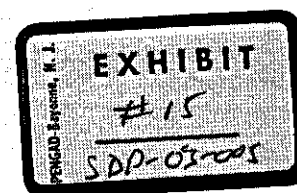
Please consider this as a request to keep the record open on SDP-03-004 and SDP-03-005, proposals for MXD development in Kentlands.

I believe that SDP-03-005 is fatally flawed because of an unjustified parking waiver request and for reasons given in my testimony at the June 2, 2003, public hearing (testimony I would like to revise and extend) and that SDP-03-004 should not be considered in isolation, since these parcels are adjacent to each other.

Moreover, I believe additional time is desirable so that the results of the "15th anniversary tune-up charrette" planning exercise can be considered in the development of plans for revisions to approved development on these parcels and for in-fill or intensification.

Thank you very much for your consideration.

Richard L. Arkin  
121 Selby Street  
Gaithersburg, MD 20878-5647  
301-258-7874/phone  
301-807-2058/cell  
1-303-474-7488/fax  
[richardarkin@aol.com](mailto:richardarkin@aol.com)



**Dan Janousek**

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>>> "Brian O'looney" <beolooney@hotmail.com> 06/13/03 03:15PM >>>  
June 13, 2003

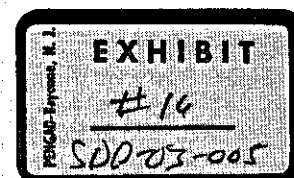
Dear Mr. Felton

Attached please find a statement regarding the applications SDP-03-004 & SPD-03-005, before the Planning Commission and City Council. I understand, per our previous conversation, that if I forward this to you, you or your staff can have this printed out in color for all Members of the Planning Commission, City staff involved in review of these applications, City Manager Humpton, and the City Council. I appreciate that you are willing to do this. Thank you.

Please let me know if my understandings are incorrect in any way, or if you have any questions or comments that I may address.

Thanks again for your efforts.

Brian O'Looney  
102 Kent Square Road  
Gaithersburg, MD 20878



07/01/2003

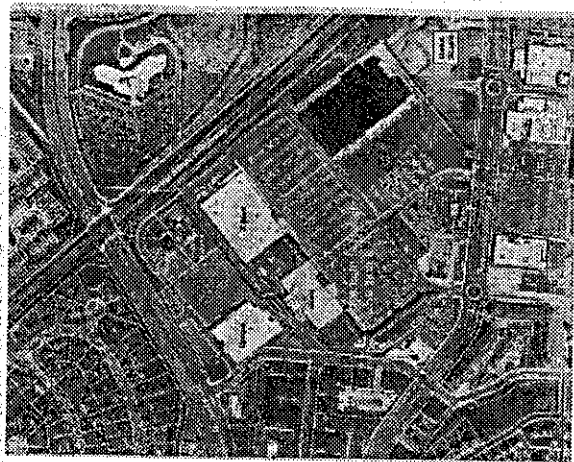
Dear Council Members and Members of the Planning Commission:

I am writing in regards to the Saul Center's proposals for Kentlands Square shopping center.

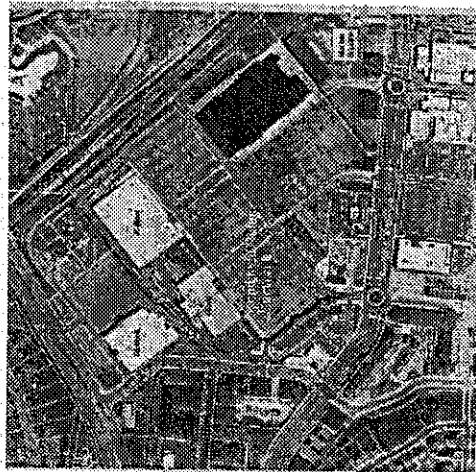
You, the members of the planning commission and the City Council, are all the primary individuals who are charged with the custodianship of land for the long term, particularly a 30-year+ outlook. This realization was hammered home to me last week when I attended the annual conference for Real Estate Opportunity Funds in New York City, on behalf of my father's small Connecticut development concern. The conference participants included most of the individuals in this country who fund larger real estate developments. This conference included some of the largest REITs and Pension Funds in the World. It was very instructive to me that not one of the participants' outlook went beyond seven to ten years.

Given today's financial climate, and the demands of Saul's REIT shareholders, their outlook too has to have a primarily 7-10 year focus. Unfortunately, many of the issues at stake at Kentland's Square relate to the consideration of a longer-term development outlook, which is why I now address this to you. It is a very rare occurrence for a citizen, such as myself, to raise my voice because the outlook of a development project is not intensive enough for the good of the community as a whole, but that is clearly what I espouse here. Following please find my comments in relation to this specific application for Kentlands Square:

I suggest that you immediately approve the parcel under consideration in **SDP-03-004**. This proposal, for a shopping building adjacent to Lowe's, is in keeping with the design intent for a MXD zoned pedestrian-oriented environment, and will enhance the quality of life for all residents of Gaithersburg. If the Office/over/Retail model proves as successful as I think it will, Saul will be tempted to repeat it over and over again on their property. I also petition for approval of the corner building "Pad Site B", adjacent to the "Blockbuster Video", as proposed in **SDP-03-005**. It will enhance the pedestrian-oriented nature of the commercial environment envisioned with the MXD zoning. I suggest immediate approval of this portion of the application of **SDP-03-005**, so that Saul Centers can move forward right away with their work that will benefit all of us.



Existing site showing parking loads.  
Lowe's in blue; Kentlands Blvd in purple.



New Proposed Development in Red  
suggested for immediate approval.

However, it is the mid-block buildings, "Pad Sites C,D&E" in application SDP-03-005, between this corner building next to "Blockbusters" and the "Mattress Discounters", across from O'Donnell's parking lot, about which I am very concerned. I have prepared some exhibits related to these concerns that I have shared with Saul Centers, a client of the architectural firm for which I work.

My concerns are twofold:

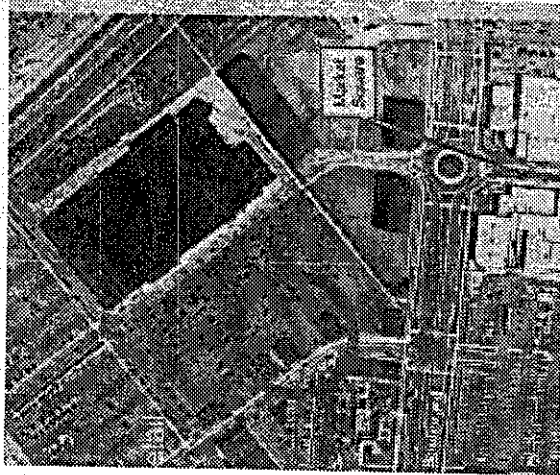
- 1) These buildings promote a streetfront which is not continuous with the two existing pedestrian corridors to Kentlands Square shopping center from Kentlands/Lakelands. These two pedestrian corridors are currently Market Street and Main Street.
- 2) These buildings, (and the leases within them) will likely prohibit any further development on the Saul Center's property, as there will be little ability to phase future parking, particularly decked parking, to promote the higher intensity of uses envisioned in the MXD zoning. The proposed program (i.e. three pad sites) could be placed elsewhere on the Saul Center's parcel (i.e. the north side or east side facing Lowes), without fundamental change to the design of the buildings or their ability to be leased, and allow for the potential of having further growth into the future.

#### First concern

An ideal retail pedestrian corridor has a continuous wall of buildings on both sides of the street, with retail located on the ground floor with shop and office entries every 20-35' max. These conditions exist both at Market Street and (for the most part) in Main Street, which both dead-end into Kentlands Blvd at Kentland Square's south.

In the construction of retail across from O'Donnell's parking lot, I would suggest that we are creating a segment of street frontage that will likely be discontinuous in perpetuity with all other retail within Kentlands. Certainly, O'Donnell's is not likely to build the other side of the street, but more importantly, given the impact of the parking loads from Fresh Fields and Petsmart, it will be difficult, if not impossible, to phase a retail corridor that will connect back to the heart of Kentlands/Lakelands through the Beatty property. I suggest, rather, it is in the public realm's best interest to attempt to enhance the streetwall at Market Street, as well as to continue the extension of Main Street, by extending the line of the "Main Street" retail already begun with the Chevy Chase Bank, Party Store and Blockbuster Video. This would complete one whole side of a street (from Lowes to Chevy Chase Bank) that could be considered an "A" street, as opposed to a simple segment of a "B" street that is currently contemplated.

#### Second concern:



Existing site showing the proposed pad sites and their parking loads

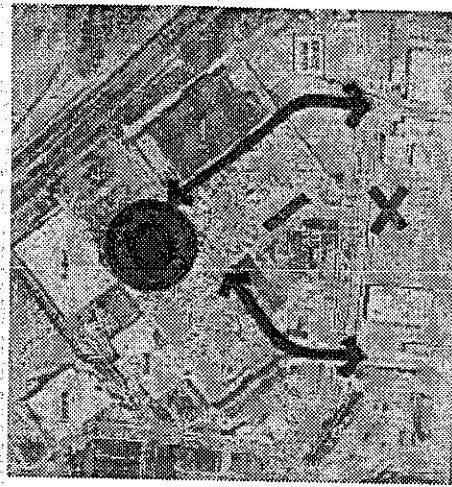
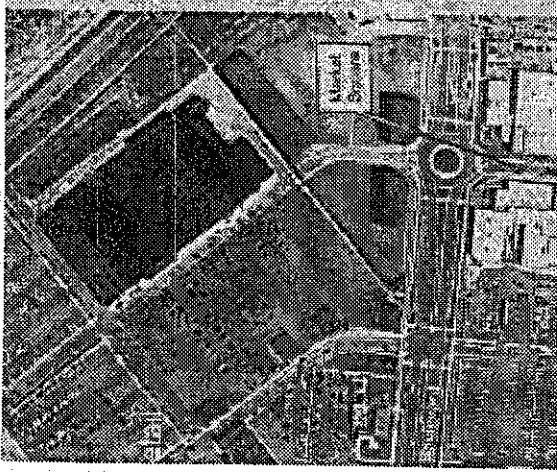


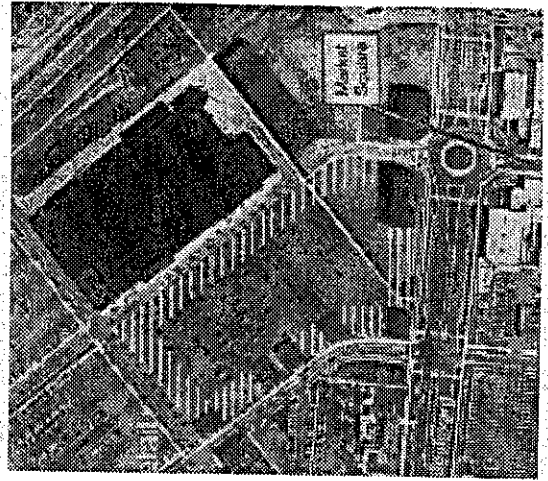
Diagram showing main pedestrian corridors to Kentlands Square shopping center; Main Street is on the left, Market Street is on the right.

It appears to me that more time needs to be spent by the City's planners reviewing the impact of building placement and parking on the phasing of long-term development at Kentlands Square. The plan before you in SDP-03-005 will max out the development potential of the Saul Property, which I argue is not in the City's or Saul's best interest. The proposed program (the three pad sites - Pad Buildings C, D, & E) could be located elsewhere on the site, say on the north side of Saul's property, and allow for future expansion on the site. As currently planned, all of the ground of Saul's Property will be utilized for parking and pad sites, and little ability to phase future growth is accommodated. If Saul tried to build another building, let alone a parking deck, one of their existing tenants would scream, because it would definitely impact their ability to operate by impacting the proximity of their parking.

If these buildings are approved, the citizenry of Gaithersburg will be likely laden with a suburban strip center surrounded by parking for the long term, with little potential for expansion or growth. In the future it will be extremely difficult, if not impossible, to continue a wall of building retail frontage along Market Street into the heart of Kentlands' Square. If the city is inclined to approve this proposal, they should garner assurances from Saul Centers that the leases signed for these buildings will be immediately transportable by Saul Centers to other sites within Kentlands Square, or simply terminatable.



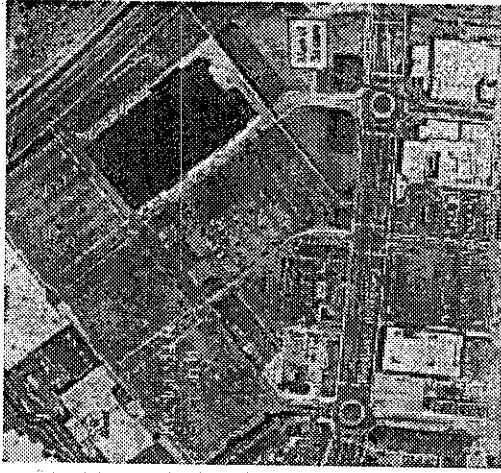
Parking loads of the new pad sites are shown in light red.



Block edges which would be left unbuilt into perpetuity are shown in yellow.

### Council Member Schlichting's Alternate Phasing Proposal:

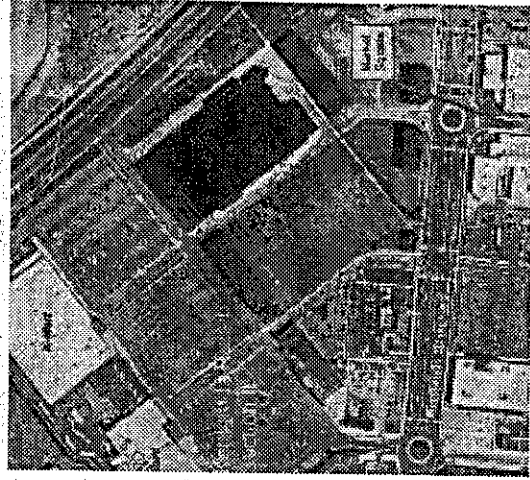
I would concur with Council Member Schlichting, as he suggested in the Council Meeting on June 2nd, that it is better for the community at large, as well as for Saul Centers, that their next three pad sites are phased on the north side of their site, along the continuation of the "A" street extension of Main Street. Remember, there is a shared parking agreement between this property and the property to the north, which can be used to our advantage in considering the long term growth of Kentlands Square. By building the Pad Sites on the north side of their property, they leave a large expanse of land available for future growth.



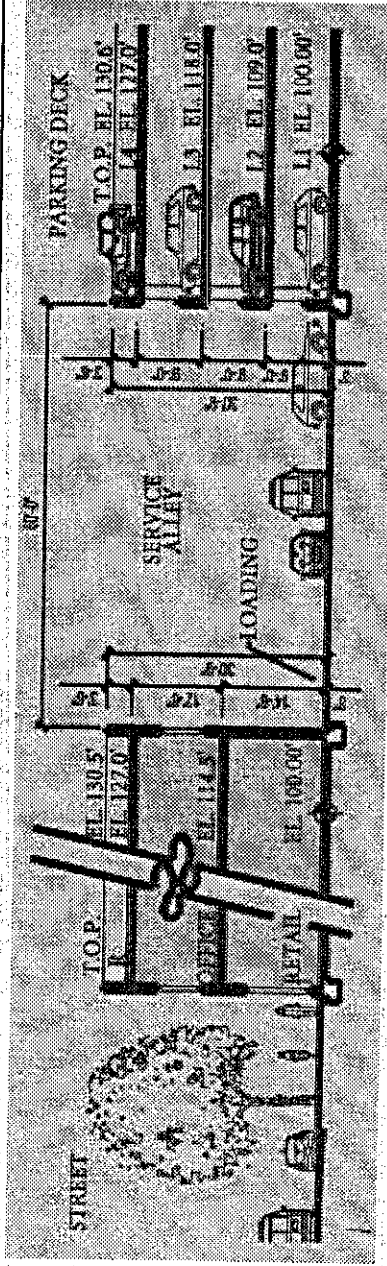
Parking loads of existing properties are shown in aqua, light blue, and purple. New parking loads are shown in red.

Upon this land, a parking deck or deck with additional retail below (similar to that at the Washingtonian) could be added. The retail below could be configured as separate shops facing O'Donnell's parking lot, or they could be organized as one Big-box retailer. While this project is under construction, Lowes parking would not be interrupted, and their business could go on without impact.

These plan diagrams rely on the proven conceptual model illustrated in the section on the following page. Ideal market retail has a minimum floor to floor height of 14'-6". Some developers like to go as high as 20'-0". Office space has a minimum floor to floor height of 12'-6". Using the two-story, inexpensive, bar joist building type as already proposed by Saul in SDP-03-004, one can screen a four level parking deck, as shown in the diagram below, because the typical floor to floor for a parking deck is 9'-0". The developer can avoid, at a considerable savings, combining construction types, such as has been done at the Washingtonian Center, by not spending money on the kind of stuff you don't see, (like more complex building systems necessitated by mixing uses), and spending it on the things you can see, such as the exterior facades.



Location for new parking deck/retail structure shown in orange.



Upon completion of the deck, Lowe's could then utilize the parking deck (from access opposite Lowe's main entrance), similar to the way that many large big box retailers operate today, such as Home Depot and Cosco in Gaithersburg. They could also, as suggested by Mayor Katz, move their main commercial entrance/loading operations to the rear of their store, as they have done in other locations in the country. This would allow for the potential, at some future date, of the construction of buildings that would continue the street corridor of Market Street into the heart of Kentlands Square.

Council Member Schlichting's alternate phasing proposal appears to allow Saul Centers the same amount of program that they are currently requesting, allows them to use the same basic building designs that they have already paid for, and allows for additional growth in the future, which I would think is in both their and the City's best interest.

As an additional note, I also urge the City to consider the use of PID or TIFF financing vehicles to help defray the initial cost of construction for parking decks, in this location and elsewhere in Kentlands Square, to promote and accelerate the creation in the long term of a vibrant pedestrian-oriented retail/office environment. If, as I expect will be the case, the office over retail building that Saul is proposing proves successful, the model for quality commercial development at KentlandsSquare will hinge on the provision of free and convenient concentrations of parking.

Thank you for your time and consideration.

Brian O'Looney  
102 Kent Square Road  
Gaithersburg, MD 20878

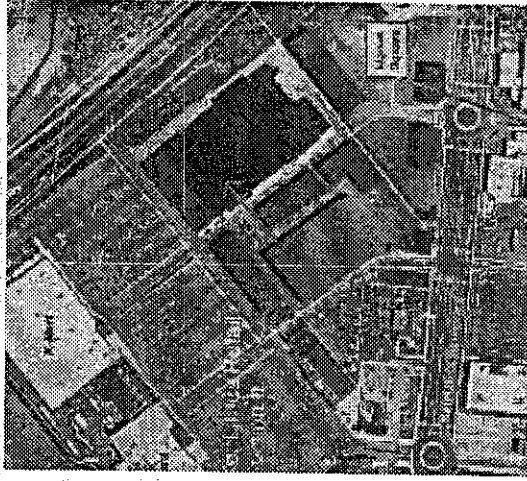


Diagram showing full potential build-out on Saul Center's existing property.

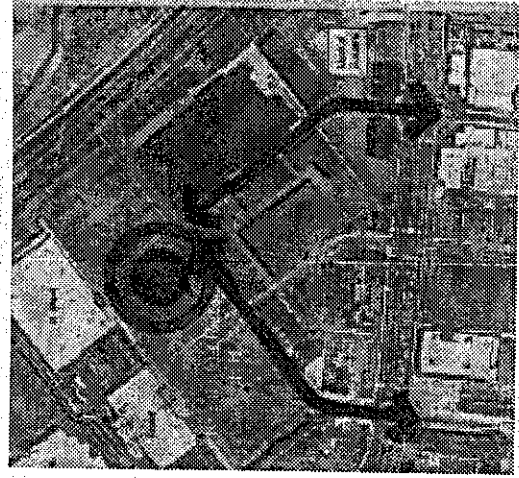


Diagram showing how Council Member Schlichting's proposal could eventually achieve our community's goals.

3. ~~Rick Marvin, 223 Little Quarry Road, expressed concern with traffic circulation and entryways of the plan.~~

~~There were no other speakers from the public.~~

~~Motion was made by Commissioner Bauer, seconded by Commissioner Levy, that the Planning Commission record on SDP-03-004, be held open for eleven (11) days.~~

~~Vote: 4-0~~

~~Motion was made by Council Member Schlichting, seconded by Council Member Marraffa, that the City Council record on SDP-03-004, be held open for thirty (30) days.~~

~~Vote: 5-0~~

2. **JOINT - SDP-03-005 - Saul Holding Limited Partnership c/o Saul Center, Request to Amend the Approved Schematic Development Plan SDP 3, Section 1, Parcel L, Block Q, From 353,201 Square Feet of Building Area 373,201 Square Feet of Building Area in Accordance With §24-160D.11 and §24-198(c) of the City Code. The Subject Property is Located at 317 Kentlands Boulevard, Kentlands, Section 1, Parcel L, Block Q and is Bordered by Great Seneca Highway and Kentlands Boulevard. The Subject Property Consists of Approximately 33.75 Acres of Land and is Zoned MXD (Mixed Use Development)**

*Planner Janousek* stated the above hearing was advertised on May 14 and May 21, 2003 in the *Gaithersburg Gazette*. He noted the applicant is proposing the construction of 20,000 square feet of retail/commercial land use in four one-story buildings on an existing retail/commercial site. He stated a parking study is part of the application.

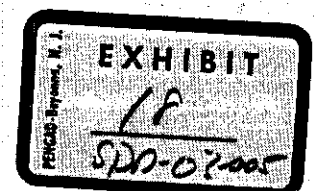
*John Collich, Senior Vice President, Saul Centers*, stated Parcel L was purchase with the desire to build another building on the site. The applicant is now proposing four buildings on the parcel to shield the parking lot and create exciting store fronts. He stated that the buildings will be broken up with landscaping, a plaza, and walkways.

*Gary Unterberg, Rodgers Consulting, Inc.*, oriented the City Council and Commission with the site off Kentlands Boulevard and its neighboring buildings. He gave a brief background stating the plan was previously approved as part of SDP 3, which included the Lowes and Giant lots, and others with the original plan now modified. He stated the applicant would like to create a streetscape with four building sites. He stated that all the buildings will face the street with some parallel parking, accommodating traffic movement with access to the parking field near Lowes. In closing, he stated the applicant is requesting a waiver of 230 parking spaces.

*Chris Cowie, Architecture, Cowie Associates, P.C.*, reviewed the elevations, entryways, and storefronts facing out to the street to create a streetscape. He stated that traditional building elements and materials will be used for the buildings.

*Michael Workosky, Engineer for Wells & Associates, LLC*, he stated a parking study was prepared for the project. He stated occupancy counts were done on the site on a weekday and on a Saturday on hourly intervals. He stated there is sufficient parking to accommodate the weekday and Saturday peak hours for the Kentlands Square Shopping Center and its surrounding buildings.

Mayor Katz asked if Saul Centers owned the Lowes parking lot and questioned the use of parking spaces for sale items. Saul Centers is working with the management to address the concern.



The Mayor and City Council and Commissioners asked that a study be done to address the shopper's pattern of use. They asked that the modified design create a pedestrian oriented development.

Council Member Schlichting asked the applicant to consider locating the buildings between the Blockbuster and Lowes, because of the drive aisle being an extension of Main Street coming off of the circle. He stated that it would be more pedestrian friendly.

Speakers from the public:

1. *Richard Arkin, 121 Selby Street*, opposed to plan stating that it was not shown to the Town Architect and that the plan does not support the parking waiver requested. He agreed with Council Member Schlichting's proposal regarding locating the buildings.
2. *Rick Marvin, 223 Little Quarry Road*, also agreed with Council Member Schlichting's proposal. He stated the original application with only one pad site was deferred because of traffic circulation. He asked that improvements be made to the plan.

There were no other speakers from the public.

Motion was made by Commissioner Bauer, seconded by Commissioner Winborne, that the Planning Commission record on SDP-03-005, be held open for eleven (11) days.

Vote: 4-0

Motion was made by Council Member Somerset, seconded by Council Member Alster, that the City Council record on SDP-03-005, be held open for thirty (30) days.

Vote: 5-0

3. **An Emergency Ordinance to Amend Chapter 2 of the City Code, Entitled "Administration," Article II, Entitled "Municipal-County Relations," Section 2-6 Thereof, Entitled "Exemption From Montgomery County Legislation and Regulations Within the City" so as to Include the Provisions of Section 19-35 Entitled "Water Quality Protection Charge" of Chapter 19 of the County Code Entitled "Erosion, Sediment Control, and Storm Water Management", as Being Applicable and Enforceable Within the City**

Assistant City Manager Felton stated the above proposed ordinance would make Section 19-35 of the Montgomery County Code applicable within the City of Gaithersburg. The public hearing was advertised in the *Gaithersburg Gazette* on May 21, 2003. Staff is recommending that the City pursue a Memorandum of Understanding with Montgomery County whereby the County would assess and collect the Water Quality Protection Charge on properties within the City of Gaithersburg, and return these funds (less administrative costs) to the City to help finance our Storm Water Management and NPDES compliance programs.

He mentioned that currently, the County's Water Quality Protection Charge is \$12.75 a year for detached single-family homes, and \$4.21 a year for townhouses. Fees for multi-family properties and certain associated non-residential properties are calculated based on the amount of impervious area they contain. Staff believes that adoption of this ordinance would generate between \$110,000 to \$140,000 annually. As discussed, during the April 28, 2003 work session, it appears that the City's combined operating and capital costs in the FY'04 Budget will be approximately 1.5 million dollars. Staff recommends moving forward with the ordinance with final action on June 16, 2003.

No speakers from the public.

3. Applicant is to provide all necessary joint access and parking easements for review and approval during the final site plan process; and
4. The streetscape design, including the street widths, sidewalk widths, street trees, planting strips, and sidewalk locations are to be consistent with Kentlands and other similar projects in the City. The applicant is to work closely with City Staff to incorporate a final streetscape design to be reviewed and approved during the final site plan process.

Vote 5-0

2. SDP-03-005 -- Saul Holding Limited Partnership c/o Saul Center  
Application to amend the approved schematic development plan SDP-3, Section 1, Parcel L, Block Q, from 353,201 square feet of building area to 373,201 square feet of building area, in accordance with §24-160D.11 and §24-198(c) of the City Code. The subject property is located at 317 Kentlands Boulevard, Kentlands, Section 1, Parcel L, Block Q, bordered by Great Seneca Highway and Kentlands Boulevard. The subject property consists of approximately 33.75 acres of land and is zoned MXD (Mixed Use Development).

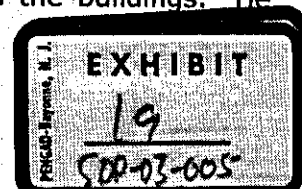
*NOTE: No additional testimony was taken.*

Planner Janousek stated this application was the subject of a joint public hearing with the City Council on June 2, 2003, and three exhibits were added to the file. He referenced a memorandum to the Commission from Long-Range Planning Director DePoe, which discussed the basis for staff's reconsideration of its original recommendation for denial of the proposal. Mr. Janousek explained that the result of a meeting of staff and the applicant, subsequent to staff's preparation of the staff analysis, was the applicant's response to staff's concerns with certain aspects of the plan, meriting staff's recommendation for approval, subject to the applicant's compliance with conditions that Mr. Janousek listed. He cited in particular staff's requests for the removal of the access point between Buildings D and E for an additional pedestrian plaza, the widening of street and sidewalk widths, and other streetscape improvements.

Mr. Janousek noted that staff considers this proposal as an infill retail project, not a redevelopment plan, and should not preclude moving forward with a redevelopment plan for the Kentlands Square shopping area. He answered questions of Commissioner Winborne regarding the recommended conditions relating to the elimination of the access point, parallel parking along the frontage of the buildings, and shared parking in relation to a parking waiver.

Regarding the latter, Planning and Code Administration Director Russel noted that the applicant had just submitted a parking easement agreement which staff had not yet reviewed. She stressed the importance of a careful study of the shared parking agreement to ensure parking availability is adequate for a parking waiver, without which the buildings cannot be developed as presently proposed.

Commissioner Bauer suggested that other aspects besides parking such as visibility be discussed at meetings with adjacent property owners, adding that cross and sight sections be made available. He further recommended that staff work with the applicant to resolve the pedestrian access and vehicular circulation resulting from the elimination of the access. In addition, he favored minimizing the overall footprint for widening sidewalks and storefronts, and greater greenspace where existing rather than little pockets between the buildings. He



supported staff's strategy for infill opportunities, such as this project. The Commission concurred and moved as follows:

Commissioner Levy moved, seconded by Commissioner Winborne, to recommend to the City Council APPROVAL of SDP-03-005, with the following conditions:

1. Applicant is to continue to work with staff on the final building layout and architectural design as well as the type and location of building signage. Final building layout, design, elevations and building signage are to be approved by the Planning Commission;
2. Applicant is to remove the access drive between Buildings D & E to provide an additional pedestrian-friendly plaza;
3. Applicant is to provide additional landscaping around the proposed buildings and pedestrian plazas between Buildings C & D and Buildings D & E for Planning Commission approval;
4. Applicant is to continue to work with staff on the streetscape design, including the street widths, sidewalk widths, street trees, planting strips, and sidewalk locations. The final streetscape design is to be reviewed and approved by the Planning Commission during the final site plan process; and
5. Before the granting of any parking waivers, the applicant is to execute a shared parking agreement that accommodates the off-site parking per the parking waiver request.

Vote: 5-0

#### V. SITE PLANS

1. AFP-03-019 -- Gaithersburg High School R-A Zone  
314 South Frederick Avenue  
Two Portable Classrooms  
AMENDMENT TO FINAL PLAN REVIEW

Community Planning Director Schwarz stated this is a request to install two additional modular buildings in the rear of the school, near the southeast corner of the football field. She commented that these portables would address the student increase expected this fall.

*Applicant representative Ray Trout, Construction Division of Montgomery County Public Schools, presented the plan, noting the proposed location is residual area endorsed by the school Principal near the other portables. In response to Commissioner Winborne, Mr. Trout indicated that high schools do not have covered walkways to the modulares, but do provide a roofed porch. Commissioner Hicks inquired about its removal when the building addition is completed and a school representative answered all portables would be removed then.*

Commissioner Hicks moved, seconded by Commissioner Winborne, to grant AFP-03-019 - Gaithersburg High School, AMENDMENT TO FINAL PLAN APPROVAL.

Vote: 5-0

# SAUL CENTERS, INC.

7501 Wisconsin Avenue, Suite 1500, Bethesda, Maryland 20814-6522  
(301) 986-6200

July 1, 2003

Via: Facsimile (301)258-6336 and FedEx

Dan Janousek  
Planner, Planning, and Code Administration  
Department of Long Range Planning  
City of Gaithersburg  
City Hall  
31 South Summit Avenue  
Gaithersburg, MD 20877

Re: SDP-03-005

Dear Mr. Janousek:

It has been a pleasure working with you on the revisions to the above Schematic Development Plan. During the process we learned of the June 11, 2003 letter, from Patrick Shelley of Maguire Woods, indicating Lowe's Home Centers, Inc ("Lowe's") concern for the plan. Over the past few weeks, we have been in contact with representatives of Lowe's including their Senior Corporate Council, Mr. Jeffrey Gray. We have given Lowe's assurances we have no intention of violating the provisions of the lease between the parties and any future development will comply with the provisions of the agreement. Attached for your file, please find recent correspondence to Mr. Gray addressing our commitment to honor our agreements.

Mr. Janousek, we expect our cooperative dialog with Lowe's will continue as we move forward through the development process. Should you have any questions concerning the above, please feel free to contact me at (301) 986-6134.

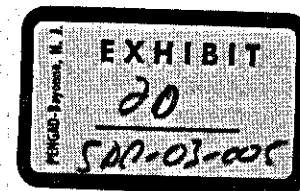
Sincerely,



John Collich  
Senior Vice President

CC: Jeffrey Gray, Esquire via facsimile (336) 653-3262 and regular mail

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JC/jf



JC

## SAUL CENTERS, INC.

7501 Wisconsin Avenue, Suite 1500, Bethesda, Maryland 20814-6522  
(301) 986-6200

June 18, 2003

Via: Facsimile (336) 658-3262

Jeffrey E. Gray  
Senior Corporate Counsel and Assistant Secretary  
Lowe's Companies, Inc.  
P.O. Box 111  
North Wilkesboro, NC 28659-1111

- Re: • Lease dated July 15, 1991 by and between Saul Holding Limited Partnership  
successor to Kentlands Square Limited Partnership, Landlord and Lowe's Home  
Centers, Inc., Tenant; and
- Amendment to Schematic Development Plan SDP-03-005 known as Kentlands  
Section 1, Parcel L, Block Q, located at 317 Kentlands Boulevard


Dear Jeff:

Pursuant to our conversation, this letter will serve to confirm Landlord of the above Premises has no intention of violating the terms of the above referenced Lease. As discussed, the Lease permits a 6,000 s.f. building to be constructed on the property in a specific location. Additional buildings and development, if any, will not occur unless such buildings are approved by Tenant in accordance with the provisions of the above Lease.

As discussed, the above Schematic Development Plan will simply vest rights in the land and should the opportunity arise and should Tenant under the above Lease agree to the additional buildings, Landlord will proceed with site plan approvals and building permits, then subsequent construction.

Jeff, we look forward to working with you and your management team on the ongoing operation of the Kentlands store and continuing our mutually beneficial relationship. Should you have any questions concerning the above, please contact me at (301) 986-6134.

Sincerely,



John Collich  
Senior Vice President

Enclosures

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JC/acs

# SAUL CENTERS, INC.

7501 Wisconsin Avenue, Suite 1500, Bethesda, Maryland 20814-6522  
(301) 986-6200

July 1, 2003

Via: Facsimile (301) 258-6336 and FedEx

Dan Janousek  
Planner, Planning, and Code Administration  
Department of Long Range Planning  
City of Gaithersburg  
City Hall  
31 South Summit Avenue  
Gaithersburg, MD 20877

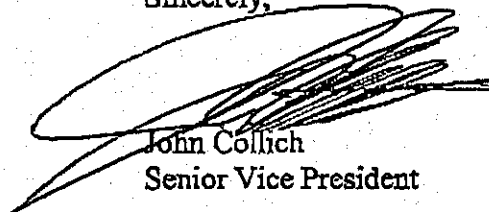
Re: SDP-03-005

Dear Mr. Janousek:

It has been a pleasure working with you on the revisions to the above Schematic Development Plan. During the process we learned of the June 13, 2003 letter, from Roger Bain, Esquire addressing the concerns of the adjoining landowner, Kentlands Retails, Inc. ("Adjoining Owner"). Over the past few weeks, we have been in contact with representatives of the Adjoining Owner and provided assurances we have no intention of violating the provisions of the Reciprocal Easement Agreement ("REA"). For your file, attached please find recent correspondence to the Adjoining Owner's representative Mr. George Duke, Managing Partner for LaSalle Investment Management, confirming our commitment to honor the REA.

Mr. Janousek, we expect our cooperative dialog with the Adjoining Owner will continue as we move forward through the development process. Should you have any questions concerning the above, please feel free to contact me at (301) 986-6134.

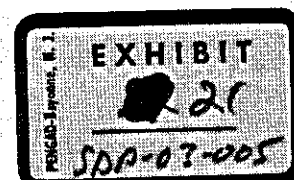
Sincerely,



John Collich  
Senior Vice President

CC: Roger Bain, Esquire via facsimile (301) 608-3847 and regular mail  
George Duke via facsimile (410) 347-0612

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JC/jf



# SAUL CENTERS, INC.

7501 Wisconsin Avenue, Suite 1500, Bethesda, Maryland 20814-6522  
(301) 986-6200

June 20, 2003

Via: FedEx

George Duke  
Managing Director  
La Salle Investment Management  
100 East Pratt - 20th Floor  
Baltimore, MD 21202

- Re:
- Reciprocal Easement Agreement dated September 30, 1997 by and between Saul Holdings Limited Partnership successor to Kentlands Limited Partnership; Robert L. Gorham and David M. Bond, Trustees; and Principal Mutual Life Insurance Company ("REA"); and
  - Amendment to Schematic Development Plan SDP-03-005 known as Kentlands Section 1, Parcel L, Block Q, located at 317 Kentlands Boulevard

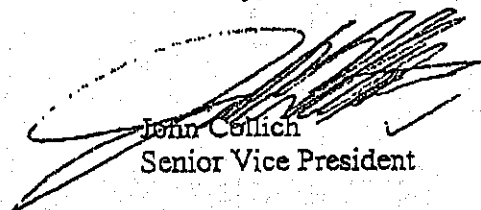
Dear Mr. Duke:

This letter will serve to confirm Saul Holdings Limited Partnership, party to the above REA, has no intention of violating the terms of the Agreement. The REA permits an additional 6,000 s.f. building to be constructed on Parcel L in a specific location. Additional buildings and development, if any, will not occur unless such buildings are approved by the parties in accordance with the provisions of the above REA.

The above Schematic Development Plan will simply vest rights in the land and should the opportunity arise and should the parties under the above REA agree to the additional buildings, the parties will be required to amend the REA to allow the additional development.

Mr. Duke, we look forward to working with you and your management team on the ongoing operation of the Kentlands Square Shopping Center. Should you have any questions concerning the above, please contact me at (301) 986-6134.

Sincerely,



John Cellich  
Senior Vice President

cc: Scott Schneider

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JC/acs

# WHEELER & KORPECK, LLC

WILLIAM T. WHEELER  
ROBERT L. BROWNELL  
ROGER K. BAIN  
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rbain@wandk.com  
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July 1, 2003

Hand Delivered

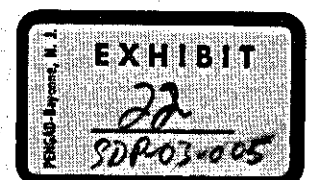
Mr. Daniel Janousek, Planner  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, MD 20877-2098

Re: Testimony – Joint Public Hearing – June 2, 2003  
SDP-03-005

Dear Mr. Janousek:

This office represents Kentlands Retail, Inc. (hereafter “Kentlands”), owner of “Parcel K” at the Kentlands Square Shopping Center as regards the requested expansion of Saul Properties (hereafter “Saul”, owners of “Parcel L”) at Kentlands Square referenced above. This letter constitutes our testimony for the Mayor and Council’s record which stems from the Joint Public Hearing held with the Planning Commission on June 2, 2003. We were unable to provide testimony regarding the pending Amendment referenced above at the Public Hearing on June 2, 2003 but were able to submit written testimony before the Planning Commission by letter dated June 13, 2003 (copy attached) where we outlined our concerns regarding parking, congestion of the entrance street between Mattress Discounters and O’Donnell’s restaurant, and the visibility of Kentlands tenants within the Kentlands Square Shopping Center.

Since submitting our testimony in the Planning Commission record, we have learned that any parking waiver granted as to “Parcel L” which increases the impact on “Parcel K” may have an adverse effect on pertinent sections of Kentlands leases with its tenants, Payless, Blockbuster, K-Mart and Giant. That is a matter we need to review very



WHEELER & KORPECK, LLC

Mr. Daniel Janousek, Planner

July 1, 2003

Page 2

closely. In addition, K-Mart, our anchor tenant is coming out of bankruptcy. At this time we are not sure what our parking needs will be with either K-Mart or possibly a new tenant at the same location.

In addition, there is a recorded Reciprocal Easement Agreement between the owners of Parcels "K" and "L" (hereafter "REA", a copy of which is attached hereto and made a part hereof) which, among other things, under paragraph 5(b) allows that the parties can only construct additional improvements in "mutually approved building areas". There are two areas designated by the REA on "Parcel L" as being "mutually approved". Pad Site "B" is already constructed with 3,000 square feet and is occupied by Mattress Discounters. Pad Site "A" is directly across from Blockbuster (designated as "Site B" on Saul's amendment proposal) and may be developed up to 6,000 square feet under the aforementioned paragraph 5(b) of the REA.

We have both received a letter from and met with Mr. John Collich, Senior Vice President, Saul Centers, Inc. and he has acknowledged that "...additional buildings and development, if any, will not occur unless such buildings are approved by the parties in accordance with the provisions of the above REA". Mr. Collich also acknowledged that Saul Holdings Limited Partnership was party to the REA and had "no intention of violating the terms" of that Agreement. While Kentlands is happy with Mr. Collich's acknowledgement, it remains concerned with the proposed development. Section 4(a)(ii) of the REA precludes the use of parking areas for purposes other than parking; however, Saul may need a parking waiver for development of Pad Site A at the same time their prime tenant, Lowes is in violation of city ordinances for storing inventory on existing parking spaces within "Parcel L".

WHEELER & KORPECK, LLC

Mr. Daniel Janousek, Planner


July 1, 2003

Page 3

In summary, Kentlands feels that any development beyond that already agreed to in the REA is something that should be studied comprehensively for the Kentland Square Shopping Center and is therefore opposed to any short term infill development unless "mutually approved by the respective parties" as required by the REA.

Very truly yours,

WHEELER & KORPECK, LLC

By:   
Roger K. Bain

RKB:lek

cc: Leslie S. Ries, Esq.  
Ms. Jeanine Wolfe  
Ms. Heather Kahn  
Mr. Timothy Hearn  
Mr. John Collich  
Ms. Karen S. Gentry

# WHEELER & KORPECK, LLC

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(301) 562-7285

June 13, 2003

Hand Delivered

Mr. Daniel Janousek, Planner  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, MD 20877-2098

Re: Testimony – Joint Public Hearing – June 2, 2003  
SDP-03-004  
SDP-03-005

Dear Mr. Janousek:

This office represents Kentlands Retail, Inc., one of the owners at the Kentlands Square Shopping Center as regards the requested expansion of Saul Properties at Kentlands Square referenced above. This letter constitutes our testimony for the Planning Commission record which stems from the June 2, 2003 public hearing referenced above. We will be submitting additional testimony for the Mayor and Council's record prior to July 2, 2003.

Our first area of concern is the parking issue. As regards SPD-03-005, Saul Properties indicated that they expect to eliminate 320 parking spaces on the Lowe's parking lot. Their plan was to "train customers to park at Kmart and across from Giant". To our knowledge, there has been no discussion with Kentlands Retail, Inc., the owner of the Kmart parking lot, about the impact of this proposed development. Even though there may be cross parking easements within the shopping center, there are issues of maintenance, liability and allocation of square footage for future development among the different owners which should be more fully discussed and addressed.

The second issue is the congestion of the entrance street between Mattress Discounters and O'Donnell's restaurant where the four proposed new buildings would be

WHEELER & KORPECK, LLC

Mr. Daniel Janousek, Planner  
June 13, 2003  
Page 2

located. Congestion would be inevitable especially if parallel parking was permitted on the main entrance way in front of the four proposed buildings.

Our third issue relates to the visibility of the Kentlands Square Shopping Center. The Center is difficult to see as it is and does not have high visibility in the community due to sign regulations. The addition of this proposed new development would block the visibility of the Kentlands Retail, Inc. tenants from one of the main entranceways into the Shopping Center.

We look forward to working with the City of Gaithersburg in hopes that these issues can be amicably addressed.

Very truly yours,

WHEELER & KORPECK, LLC

By: 

Roger K. Bain

RKB:lek

cc: Leslie Ries, Esq. (by Mail)  
Jeanine Wolfe (by Fax 443-543-0191 and Mail)

**RECIPROCAL EASEMENT AGREEMENT**

**(ACCESS, PARKING AND UTILITIES)**

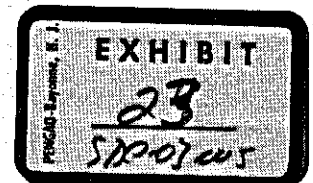
by and between

**KENTLANDS LIMITED PARTNERSHIP,**  
a Virginia limited partnership;

**ROBERT L. GORHAM and DAVID M. BOND, TRUSTEES,**

and

**PRINCIPAL MUTUAL LIFE INSURANCE COMPANY**



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## RECIPROCAL EASEMENT AGREEMENT

### (ACCESS, PARKING AND UTILITIES)

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made as of this 20<sup>th</sup> day of September, 1997, by and between KENTLANDS LIMITED PARTNERSHIP, a Virginia limited partnership ("Owner") (Grantor for indexing purposes); ROBERT L. GORHAM and DAVID M. BOND, TRUSTEES (the "Principal Trustees"), (Grantor for indexing purposes); and PRINCIPAL MUTUAL LIFE INSURANCE COMPANY, Beneficiary ("Principal") (Grantor for indexing purposes).

#### Recitals:

- A. Owner is the owner of those certain parcels of real property known and described as Parcel K and Parcel L (the "Parcels"), Kentlands Square, as the same is duly subdivided, platted and recorded in Liber Plat Book 186 at Plat No. 20505, among the land records of Montgomery County, Maryland ("Land Records").
- B. The Parcels are subject to that certain Modification and Consolidation Agreement and Restatement of Deeds of Trust, Security Agreements and Assignment of Rents, dated February 4, 1994, from the Owner to the Principal Trustees, recorded in Liber 12299, at folio 470 among the Land Records, securing an obligation more particularly described therein to Principal (the "Principal Deed of Trust").
- C. The Owner has created a retail and commercial development on the Parcels, with common facilities for access, parking and utilities for the benefit of all the buildings constructed, or to be constructed, thereon, and therefore desires to create and establish certain easements over and across the Parcels to provide for common access, parking and utilities for

the owners of the Parcels, and their agents, employees, invitees and tenants, and their respective customers and other visitors to the buildings located on the Parcels.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, and other valuable consideration, the receipt of which is hereby acknowledged, the Owner, as the owner of all of the Parcels, the Principal Trustees and Principal hereby declare that the Parcels are, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred (in whole or in part), subject to the following provisions of this Agreement, which shall run with all of such real property for all purposes and shall be binding upon, inure to the benefit of, and be enforceable by the owners of such real property, and all of their respective successors and assigns.

**Section 1. Definitions.**

For the purposes of this Agreement the following terms shall have the following meanings:

(a) "Owner" or "Owners" shall mean the Owner, or the then current fee simple owner(s) of any of the Parcels, as the context may require.

(b) "Parcel" or "Parcels" shall mean, initially, all of the Parcels, or any combination of one or more, as the context may require, and shall include any additional lot(s) resulting from a subdivision of any Parcel pursuant to applicable laws.

(c) "Parking Areas" means all parking areas, and the sidewalks, walkways and light fixtures within or adjacent thereto, now, or in the future, within the Parcels, except for sidewalks, walkways and light fixtures (e.g. building and/or canopy lights) surrounding or immediately adjacent to and abutting the perimeter of any building, structure or improvement

constructed on the Parcels and except for any sidewalks, walkways and light fixtures within the Access Easements.

(d) "Access Easements" means the pedestrian and vehicular travel lanes, access roads and entrances and exits to the Parcels, and the sidewalks, walkways and light fixtures within or adjacent thereto, located now, or in the future, on the Parcels, except for sidewalks, walkways and light fixtures (e.g. building and/or canopy lights) surrounding or immediately adjacent to and abutting the perimeter of any building, structure or improvement constructed on the any of the Parcels.

(e) "Utility Facilities" means all sanitary and storm water sewers, storm water drains and detention and storm water run off facilities, water and gas lines and mains, electric power lines, telephone, cable and communication lines, and all appurtenances thereto, now, or in the future, within the Parcels serving the Parcels and the buildings located thereon.

## **Section 2. Easements.**

(a) Access/Parking Easements. There is hereby reserved to the Owner, and granted to each future Owner of the Parcels, their agents, officers, directors, employees, invitees, licensees, concessionaires and tenants, subtenants and their respective agents, officers, directors, employees, licensees, concessionaires, customers and other visitors, without charge, the following easements:

(i) The permanent and nonexclusive right, privilege, and easement of pedestrian and vehicular ingress and egress over and across the Access Easements, and

(ii) The permanent and nonexclusive right, privilege and easement of ingress and egress and parking over and across all Parking Areas; provided that this easement

shall not permit parking (other than in loading dock areas) of tractor trailers or similar-sized trucks in the Access Easements or the Parking Areas.

Use of the Access Easements and Parking Areas shall be subject to uniform and reasonable rules and regulations established from time to time by the Owner of Parcel K with the consent of all of the other Owners, such consent not to be unreasonably withheld or delayed. No right to use any part of the Access Easements and Parking Areas shall ever be granted to any person, firm, or corporation except the Owners, their agents, officers, directors, employees, invitees, licensees and concessionaires, their respective mortgagees, and their respective tenants and subtenants, their agents, officers, directors, employees, invitees, licensees and concessionaires during the term of their respective tenancies; provided, however, that the terms of this Agreement are complied with by such persons and entities to the extent not inconsistent with any Tenant Rights (as herein defined). Nothing contained above shall be deemed to limit or restrict in any manner any existing rights of any party to use the Access Easements or Parking Areas provided such rights are set forth in an instrument recorded among the land records of Montgomery County, Maryland.

(b) Maintenance Easements. There is further hereby reserved to the Owner of Parcel K (and to the Owner of Parcel L to the extent of its exercise of its self-help rights pursuant to Section 11 hereof) the permanent and nonexclusive right, privilege and easement of ingress and egress over and across the Parcels to maintain the Access Easements and Parking Areas and to perform the maintenance required by this Agreement, subject to the provisions of Section 4(b) of this Agreement.

(c) Utility Easements. There is further hereby reserved to the Owner, and granted to each future Owner of the Parcels, without charge, the permanent and non-exclusive right, privilege and easement of ingress and egress over and across the Access Easements and Parking Areas of the Parcels for the installation, use, operation, inspection, maintenance, repair, replacement, relocation, modification, alteration and removal of Utility Facilities. Any Utility Facilities which are not used in common and which serve a building or buildings upon only one Parcel shall be maintained, repaired, and replaced by the Owner whose buildings are served by such Utility Facilities, at such Owner's sole cost. The Owner of Parcel K shall, subject to reimbursement as provided for in Section 3 hereof, maintain, repair and replace any Utility Facilities which are used in common by the Owner of Parcel K and the Owner of Parcel L. Each Owner shall review and have the right to approve in advance the location or relocation of all Utility Facilities on its Parcel, as requested by any other Owner, which approval shall not be unreasonably withheld, conditioned or delayed. The foregoing easements and the location or relocation of the Utility Facilities shall not unreasonably interfere with the use of the affected Parcel and the buildings, facilities and installations from time to time located thereon, nor unreasonably disrupt the normal daily business operations on the affected Parcel. Each Owner shall execute such documents, in recordable form, and site plans or plats, as reasonably necessary to effectuate the provisions of this paragraph, including, but not limited to, deeds and plats of easement to utility companies and to public agencies and authorities, provided that such documents are in forms reasonably acceptable to such Parcel Owner and such matters shall involve no out of pocket expense or liability to the Parcel Owner which is the subject of any request pursuant to this paragraph. Each Owner,

and the tenants, subtenants, licensees, occupants, and users of each Parcel, or any portion thereof, and their successors in interest, shall be entitled to use and tap into the Utility Facilities now or hereafter located within the Parcels, provided such tapping shall not increase the costs of operation nor materially and adversely diminish the capacity and availability of such Utility Facilities for the structures and improvements for which they were constructed and designed to service or if there is an increase in costs of operations or a material and adverse impact the party seeking to make such change, at its expense, pays such additional costs or reasonably mitigates such material and adverse impact.

(d) The initial location of the Access Easements, Parking Areas and Utility Facilities are shown on the ALTA Survey ("Survey") for the Parcels dated October, 1993 and recertified on September 26, 1997, as prepared by Rogers & Associates, Inc. of Gaithersburg, Maryland (Job Number 589A), which Survey is attached hereto as Exhibit A and incorporated herein by reference.

**Section 3. Maintenance and Insurance.** The Access Easements, Parking Areas and Utility Facilities shall be maintained and insured in accordance with the following conditions:

(a) **Delegated Maintenance Obligations.** Subject to reimbursement as herein provided, the Owner of Parcel K shall be responsible for maintaining the Access Easements and Parking Areas and Utility Facilities (to the extent such Utility Facilities are used in common by the Owner of Parcel K and Parcel L) in good repair and in safe, sound condition, sightly in appearance, and in conformity with all governmental laws, ordinances and regulations and in a condition at least commensurate with first class retail centers in the Montgomery County, Maryland area. Such maintenance shall include, but not limited to, the

furnishing of and/or payment for snow and ice removal, lighting, cleaning, policing, repairing, replacing (including replacing lighting fixtures and repaving Access Easements and/or Parking Areas) and anything necessary for the everyday maintenance and upkeep of the Access Easements Parking Areas (including landscaping) and Utility Facilities that are used in common by the Owners of Parcel K and Parcel L. Such maintenance obligation shall exclude any maintenance required to be performed by any tenant of Parcel K or Parcel L under its lease agreement. The Owner of Parcel K shall keep the Access Easements and Parking Areas reasonably free of snow, ice, surface water, debris, or other hazards. The Owner of Parcel K shall also install and maintain at all times adequate exit, entrance, and other traffic control signs to direct traffic in and out of the Access Easements and Parking Areas, and shall repave and restripe and replace markings on the surface of all parking areas and travel lanes within the Access Easements and Parking Areas, whenever reasonably necessary.

(b) Selection of Contractors. During the first twelve (12) months following the date of this Agreement, the Owner of Parcel K shall enter into contracts with the same contractors presently employed by Kentlands Limited Partnership to perform the maintenance obligations set forth in subsection (a) above (the "Existing Contractors") with the scope of such contractors' work as to maintenance (exclusive of unanticipated repairs or replacements) to be substantially identical to the scope of such contractors' work on the date hereof. Nothing contained in the preceding sentence shall prohibit the Owner of Parcel K from terminating any of the Existing Contractors for a material breach of its contract. Upon the termination of any of the Existing Contractors for breach, or following the expiration of twelve (12) months from the date hereof, if the Owner of Parcel K elects to terminate any

Existing Contractor for any reason or materially change the scope of such contractor's work, the Owner of Parcel K shall obtain at least three (3) competitive bids from qualified potential replacement contractors. All such potential replacement contractors shall have demonstrated experience in comparable retail facilities in performing the maintenance function covered by its bid. Prior to accepting any bid, the Owner of Parcel K shall submit the three (3) or more bids received to the Owner of Parcel L for its reasonable review and comment. The Owner of Parcel K agrees to consider in good faith the comments received from the Owner of Parcel L with respect to both the identity of the contractor and the scope of work to be performed by such contractor, with the understanding that it is the intent of the Owners to provide for the quality and cost efficient maintenance of the Parcels in a condition commensurate with similar retail facilities located in the Montgomery County, Maryland area; provided, however, the ultimate selection of such contractor shall be made by the Owner of Parcel K.

(c) Sharing of Maintenance Costs. The cost of all maintenance and repair for the Access Easements and the Parking Areas as set forth in (a) above, together with a management or administrative fee in an amount not to exceed ten percent (10%) of such maintenance and repair costs, shall be shared by the Owners of all of the Parcels within the Property. The share of each Owner shall be a percentage of the total costs, as follows: the gross building area of all building improvements then existing on the Parcel of each Owner divided by the gross building area of all buildings improvements then existing on both Parcel K and Parcel L as such lots may be subdivided.

(d) Payment of Maintenance Costs. Upon receiving a request for payment of its share of the maintenance costs, showing in reasonable detail all costs of maintenance

together with copies of paid invoices and certification by the Owner of Parcel K that such expenditures have been made with regard to the Access Easements, Parking Areas or Utility Facilities, the Owner of Parcel L shall remit its share to the Owner of Parcel K within thirty (30) days after receipt of such request. The reimbursable costs shall not exceed the competitive rates customarily charged for such services in the Washington D.C. metropolitan region for similar properties. Any payment not made when due shall be the personal obligation of the Owner of Parcel L, shall accrue interest at 10% per annum and shall also be a charge on Parcel L and a continuing lien upon Parcel L, enforceable at law or in equity, provided such lien shall be subordinate to any bona fide first lien deed of trust, now or in the future, encumbering Parcel L without the necessity of any further action by any party. Alternatively, at the option of the Owner of Parcel K, the Owner of Parcel K may bill the Owner of Parcel L on a monthly basis in twelve (12) equal installments based on a calendar year budget no greater than the prior calendar year's actual expenses, and within 60 days after the end of each calendar year an adjustment bill (payable within thirty (30) days after receipt) or credit will be issued based on actual expenses for such year which year-end accounting shall include a breakdown of all costs of maintenance, together with copies of the paid invoices and certification by the Owner of Parcel K that such expenditures have been made with regard to the Access Easements and Parking Areas. The Owner of Parcel L shall have the right from time to time to audit the books and records of the Owner of Parcel K with respect to the maintenance of the Access Easements and Parking Areas, with the costs of such audit to be borne by the Owner of Parcel L, unless the results of such audit show that the Owner of Parcel K has overstated maintenance costs by more than 3% for any year audited,

in which event the reasonable cost of such audit for such year shall be paid by the Owner of Parcel K. Following any such audit, any overpayment made by the Owner of Parcel L shall be promptly refunded to the Owner of Parcel L by the Owner of Parcel K and any underpayment by the Owner of Parcel L shall be promptly paid to the Owner of Parcel K.

(e) Insurance.

(i) Liability Insurance for Owners. Each Owner of a Parcel (the "Insuring Owner") shall, at its sole cost and expense, keep, maintain, or cause to be kept and maintained, a policy or policies of Commercial General Liability Insurance (ISO form or equivalent) insuring the Insuring Owner, and naming its mortgagee and the Owners and mortgagees of the other Parcels as additional insureds, against liability for bodily injury, death and property damage occurring within the Insuring Owner's Parcel, with such policy to afford protection in such amounts as from time to time are carried by prudent owners of first-class retail and commercial centers in the Montgomery County, Maryland area, but not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, death and property damage.

(ii) Liability Insurance for Maintaining Owner. Beginning on the date on which the Owner of a Parcel (the "Performing Owner") commences maintenance or construction within the Access Easements, Parking Areas or Utility Facilities located on a Parcel owned by another Owner (the "Nonperforming Owner"), and continuing thereafter until all work is completed, the Performing Owner shall, at its sole cost and expense, keep and maintain, or cause to be kept and maintained, a policy or policies of Commercial General Liability (ISO form or equivalent) insuring the Performing Owner, and naming its

mortgagee, the Nonperforming Owner, and the Nonperforming Owner's mortgagee as additional insureds, against liability for bodily injury, death and property damage occurring with the areas where work is being performed, with such policy to afford protection to the limit of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury, death and property damage.

(iii) Each Owner shall maintain or cause its tenants to maintain in effect a policy or policies insuring against loss, damage or destruction of all building improvements located upon such Owner's Parcel by those events typically insured against under the type of policy now commonly known as "all risks". Such insurance shall be in an amount of at least 100% of the actual replacement costs of such improvements, at anytime and from time to time.

(iv) Primary and Excess Liability Insurance. All limits of liability required by this Section may be satisfied by maintaining a policy or primary insurance and a policy or policies of excess liability insurance.

(v) Policy Requirements. Each insurance policy required to be obtained by an Owner pursuant to this Agreement shall be issued by an insurance company of recognized responsibility licensed to do business in the State of Maryland which is rated A or better (and is in a Financial Category size of Class VII or higher) by Best's Key Rating Guide, or which has an equivalent financial rating from a comparable insurance rating organization.

(vi) Evidence of Insurance. Each Insuring Owner shall furnish to the Owners of the other Parcels within 30 days after the Insuring Owner first becomes obligated to obtain the insurance, and thereafter within 10 days before the scheduled expiration of each

such policy, appropriate evidence of the required insurance having been issued by its insurance carriers. Each Performing Owner shall furnish to the Nonperforming Owner upon the date on which the Performing Owner commences work within the Nonperforming Owner's Parcel, and thereafter within 10 days before the scheduled expiration of each such policy, appropriate evidence of the required insurance having been issued by its insurance carriers. All insurance required under this Agreement shall contain an agreement of the insurer that such policy shall not be canceled without at least thirty (30) days' prior written notice to any insured and any additional insureds under such policy. Each Owner maintaining such insurance shall be required to notify its insurer of the identity and address of the other Owners and any first mortgagees of such other Owners. Any Owner maintaining any policy or policies of insurance required to be maintained hereunder, which policy or policies provide for a deductible amount, shall be responsible for paying such deductible amount in the event any loss or claim under any insurance policy with respect to which a deductible amount is maintained.

(vii) Blanket Policy. Each Owner shall have the right to comply with and to satisfy its obligations under this Section by means of any so-called blanket policy or policies of insurance covering this and other liability and locations of the Owner obtaining such insurance, provided that such policy or policies by the terms thereof shall allocate to the liabilities to be insured under this Agreement an amount not less than the amount of insurance required to be carried pursuant to this section, so that the proceeds from such insurance shall

be in an amount not less than the amount of proceeds that would be available if the Owner was insured under a unitary policy.

**Section 4. Additional Covenants.**

(a) Each Owner shall: ( i ) pay, when due, all real estate taxes, special or benefit assessments, and other governmental impositions and charges levied or assessed against its Parcel or any portion thereof, including the buildings and other improvements thereon, the nonpayment of which would give rise to a lien superior to that created by this Agreement; (ii) refrain from using the Access Easements, Parking Areas or the Utility Facilities for any purposes other than the purposes for which the same were constructed; (iii) not erect barriers in or otherwise impede vehicular or pedestrian traffic in or on the Access Easements and Parking Areas; (iv) not make any changes or alterations in or to the Access Easements, the Parking Areas or the Utility Facilities, except as provided herein; (v) not erect any fences or other obstructions between any portions of the Parcels, except as agreed by all Owners to facilitate the orderly and safe traffic flow between any portions of the Parcels or during periods of construction; (vi) execute such reasonable documents in recordable form as may be necessary to effectuate the provisions of this Agreement, including, but without limiting the generality of the foregoing, any documents granting easements, licenses, and similar rights or certifying or confirming to any governmental authority the existence of the rights granted hereunder; (vii) discharge (or bond off and be properly contesting) all mechanics, materialmens and similar liens against its Parcel, or any portion thereof, the nonpayment of which would give rise to a lien superior to that created by this Agreement; and (viii) at its sole cost and expense, arrange for the collection of all garbage and rubbish from

its buildings and maintain its Parcel and all building and other improvements thereon, including all travelways, sidewalks, walkways, lighting, entrances and exits, landscaping and parking areas, except those maintained in accord with Section 3 of this Agreement, in good repair and in safe, sound, clean condition, free of trash and debris, sightly in appearance, and in conformity with all governmental laws, ordinances, and regulations. If any Owner shall fail to pay any taxes or similar governmental impositions, and such failure could result in foreclosure of a lien on any land or improvement in the Access Easements or Parking Areas, then a non-defaulting Owner may make such payment on account of the defaulting Owner and recover from the defaulting Owner any amount so paid, together with interest thereon at the rate of twelve percent (12%) per annum until paid.

(b) The Owner of Parcel K and its contractors, agents, and employees, and any Owner exercising its rights under the provisions of Section 2(c) of this Agreement, shall have a temporary license to use such portions of any Parcel as may be reasonably necessary to permit the Owner of Parcel K or such Owner to exercise its rights and obligations under the provisions of this Agreement. The Owner of Parcel K, and any Owner exercising its rights under the provisions of Section 2(c) of this Agreement, shall: ( i ) perform its work with due diligence and in conformance with all governmental laws, ordinances and regulations; (ii) take all safety measures reasonably required to protect persons and property; (iii) perform such work so as to avoid, to the extent practical, interference with business operations on the Parcel on which entry is made; (iv) after the work is completed, restore such Parcel to the condition existing prior to such work; and (v) indemnify, defend and hold harmless the Owner of such Parcel from all claims for bodily injury or property damage which may be asserted against

such Owner by reason of its exercise of its rights under this Agreement. Notwithstanding clause (v) of this Section 4(b) to the contrary, if the Owner of Parcel K, or any Owner exercising its rights under the provisions of Section 2(c) of this Agreement, shall be a state or local governmental entity or an agency or other instrumentality of any such entity, then, except as permitted by applicable law, the indemnification obligation of such Owner provided for in said clause (v) shall be limited to available insurance proceeds; provided, however, that this limitation on any such Owner's indemnification obligation shall not affect in any manner whatsoever the other Owner's right to pursue a claim or claims for damages against the performing Owner as a result of bodily injury or property damage that occurs on the non performing Owner's parcel. Each Parcel shall be primarily used solely for lawful retail purposes, subject to the provisions of this Agreement, provided however the definition of retail use shall be broadly construed and shall include, but not be limited to, personal service, business service and supply service establishments such as doctors, dentists, attorneys, real estate brokers, and copy or mail stores, (ii) retail branch offices of financial institutions, brokerage houses and similar financial services, (iii) restaurants and other eating establishments, (iv) health clubs, and (v) theaters. Each Owner, at its own cost, will comply with all laws and governmental rules and regulations pertaining to its buildings and property, including the common areas, to the extent non-compliance could have a material adverse impact on any other Owner.

(c) In recognition that Parcel K of Kentlands Square and Parcel L of Kentlands Square were formerly a single parcel owned by one Owner who granted certain exclusive use and/or other rights to the tenants of such unified parcel, the Owner of Parcel K

and the Owner of Parcel L hereby agree that each shall honor such tenants' rights and perform all other obligations on or with respect to its Parcel as provided in such leases including, without limitation, rights that relate to use, exclusives, access, parking, utilities, maintenance and self help remedies (collectively "Tenant Rights"), to the extent such Tenant Rights are provided for in the leases existing as of the date hereof. Any tenant of either Parcel K or Parcel L who is a beneficiary of Tenant Rights shall, to the extent such Tenant Rights impacts or relates to the Parcel owned by the party who is not such tenant's Landlord (the "Non Landlord Owner"), have the right to enforce such Tenant Rights against the Non Landlord Owner, and for such purpose shall be deemed a third party beneficiary hereof. It is the intent of the Owner of Parcel K and the Owner of Parcel L that any tenant who is a beneficiary of Tenant Rights shall have the same ability to enforce such rights subsequent to the creation of the Parcels as subdivided lots (and any conveyance of any such Parcels to another Owner) that such tenant had prior to the creation of such Parcels and that any remedy set forth in such tenant's lease for a breach of Tenant Rights may be exercised against such tenant's landlord and such tenant shall be entitled to the benefit of all rights and remedies provided under its lease against its landlord, including, without limitation, rights of offset and reduction in rentals, if any. Nothing contained above shall permit any tenant to seek damages or other monetary compensation from a Non Landlord Owner for a breach by such tenant's landlord of any Tenant Rights. Tenant's landlord may seek damages or other monetary compensation from a Non Landlord Owner for damages incurred by such tenant's landlord arising out of the Non Landlord Owner's breach. Such Tenant Rights shall be honored during the term of any existing lease and any extension or renewal of such lease, to the extent such

extension or renewal is presently provided for in such lease. Nothing contained in this Agreement shall be deemed to impose any obligations or additional rules and regulations on any tenants under existing leases, to the extent such obligations or the imposition of such rules or regulations are not provided for in such tenant's lease.

(d) To the extent the Parcels are presently jointly subject to any recorded covenant or obligation that imposes a monetary obligation upon the Owners of such Parcels, and such covenant or obligation does not provide for the allocation of such monetary obligation upon the subdivision of the single parcel formerly constituting the Parcels into two or more parcels, then the Owners of the Parcels agree that such monetary obligation shall be prorated as follows:

(1) with respect to charges or obligations applicable to building improvements, based on the ratio that building floor area within buildings located upon each Parcel bears to total building floor area within all buildings located within all of the Parcels; and

(2) with respect to charges applicable to land and non-building improvements, based on the ratio that the square footage of each Parcel bears to the total square footage of land area within all of the Parcels.

The Owner receiving such invoice or request for payment shall promptly distribute a copy of such invoice or request for payment to the other Owners, along with such Owners' calculation of each party's prorata share. Each party shall then be responsible for paying its prorata share prior to delinquency directly to the entity entitled to the payment with written evidence of such payment to be given to the other Owners. The Owners of the Parcels agree

to request that any such assessing entity separately assess and bill the Owners of the Parcels, and to cooperate with such assessing entity to facilitate such separate assessment and billing.

**Section 5. Rights Reserved.**

(a) Grant of Additional Easements. Nothing contained in this Agreement, shall be deemed to prohibit or limit the right of any Owner to grant easements burdening its Parcel to any public body or utility company for the installation, operation, maintenance, repair, relocation, modification and alteration of sanitary and storm water sewers, storm water drains and detention facilities, water and gas lines and mains, electric power lines, telephone, cable and communication lines and other utility lines, or to transfer or assign to any public body or utility company any such easements, provided, however, that no such grant, transfer or assignment of easements shall materially interfere with or have a material adverse affect on the easements granted under this Agreement or the rights and obligations of the parties hereto or the Parcel Owners.

(b) Construction of Additional Improvements. Nothing contained in this Agreement shall be deemed to prohibit or limit the right of any Owner to build and construct improvements on its Parcel within "mutually approved building areas," including, but not limited to, the construction by the Owner of Parcel L, of two additional pad sites on Parcel L, the locations of which are shown on Exhibit B attached hereto and made part hereof ("Pad Site A" and "Pad Site B", respectively). Pad Site A, Pad Site B and the building expansion areas located to the rear of the buildings currently existing on Parcel K (the "Building Expansion Area"), which expansion areas are shown on Exhibit B hereto, are "mutually approved building areas" for purposes of this Agreement. Any and all construction hereafter

commenced shall be subject to the rights, if any, of tenants of Parcel K and Parcel L under leases existing on the date of this Agreement and, from time to time, at the request of any Owner, the other Owner(s) shall provide to such Owner a list of any rights of tenants on the responding Owner's Parcel under leases existing on the date of this Agreement that might impact any construction on the requesting Owner's Parcel. Any constructing Owner shall at its sole cost and expense be required, and permitted to obtain, directly from any tenants under leases existing on the date of this Agreement any consents required of such tenants in connection with the constructing Owner's contemplated construction activities. All of the rights, privileges and easements herein created and established shall apply and be limited, at any given time, to those areas actually improved for, constructed and maintained as the Access Easements, Parking Areas and Utility Facilities. Each Owner shall be liable for the cost of any improvements constructed on its Parcel, and any repairs, changes, renovations, alterations and additions thereto, and each Owner shall indemnify and hold the other Owners harmless against any construction liens and other claims filed against the other Owners's Parcel or the Access Easements or Parking Areas with respect thereto. If by reason of any materials or work ordered by an Owner, any notice of intention to file a mechanic's lien or other involuntary lien is filed or attaches to any portion of the Access Easements or Parking Areas or another Owner's Parcel, the Owner ordering such work or materials shall discharge of record, by payment, bonding or otherwise, such notice or lien within forty-five (45) days after the filing or attachment thereof. During initial construction of improvements and during subsequent repair, renovation or expansion thereof, portions of the Access Easements and Parking Areas as mutually agreed upon and designated by the Owners may be generally

utilized as a construction staging area and a part of the construction site to the extent reasonably necessary for such construction, repair, renovation or expansion provided such utilization does not violate the terms of any leases existing as of the date of this Agreement. Within twenty (20) days after completion thereof, all building materials, equipment and machinery shall be removed and restoration of the Access Easements and Parking Areas so utilized shall be commenced and diligently pursued by the Owner performing such construction, at its own expense, and, thereafter, such Access Easements and Parking Areas shall be maintained by the Owner of Parcel K as required by this Agreement. Each Owner agrees: ( i ) to use reasonable efforts to use architectural elements in the exterior design of any repair, replacement, expansion or renovation of the exterior or facade of any of the building improvements on its Parcel that are harmonious with the architectural elements then in the shopping center, and (ii) not to use such architectural elements or design as would result in a noncompliance with any governmental rules and regulations with respect to such Owner's building improvements or with respect to the shopping center as a whole. Any construction performed upon the Parcels shall be performed and completed in a good and workmanlike manner, using materials typically associated with the use being established. The Owner of any Parcel shall have the right, upon at least thirty (30) days' prior written notice to the Owners of the other Parcels, to move and relocate (once or more often) such facilities located on its Parcel, to such place(s) on its Parcel as it shall designate, or to temporarily close for one day each calendar year (but more often if legally necessary) all or any portion of such Access Easements, Parking Areas and Utility Facilities located on such Owner's Parcel, to prevent any public dedication thereof, or to temporarily close all or any portions of

such Access Easements, Parking Areas and Utility Facilities located on such Owner's Parcel to make and permit to be made permitted changes in and to such Owner's Parcel. Such relocation or temporary closing, and any changes in or to any Parcel, ( i ) shall be made at the sole cost and expense of such Owner; (ii) shall not unreasonably interrupt access, parking, or utility services during any business hours or violate the terms of any leases existing as of the date of this Agreement; (iii) shall not unreasonably increase the cost of utility service to the current users of the Utility Facilities; (iv) shall not unreasonably interfere with the conduct or operation of the business of any other Owner, its lessees, licensees, occupants and users or cause a default under the terms of any lease existing on the date of this Agreement or the continuous operation terms of any Deed of Trust encumbering a Parcel; (v) shall be permitted and approved by the applicable utility company and all governmental authorities with jurisdiction therefor, if such approval is required; and (vi) shall be in compliance with all other provisions of this Agreement. Additionally no entrances/exits from the Parcels to the adjacent publicly dedicated rights of way shall be relocated without the consent of the Owners of all the Parcels, which consent will not be unreasonably withheld, conditioned or delayed.

No building or other improvement shall be erected, placed or permitted to remain on Pad Site A or Pad Site B if such building or other improvement exceeds 6,000 square feet of gross building area, excluding the square footage of any driveway or drive-through used in connection with any drive-through or drive-in business conducted on such Pad Site. Further, the aggregate square footage of gross building area that may be constructed on Pad Site A and Pad Site B shall not exceed 9,000 square feet. All trash dumpsters and other refuse and storage areas on Pad Site A and Pad Site B shall be screened from the rest of the shopping

center by an opaque fence or wall or appropriate landscape screening. No building or other improvement shall be erected, placed or permitted to remain on the Building Expansion Area except (i) the building expansion set forth on the site plan attached to the existing lease for the existing tenant occupying more than 100,000 square feet on Parcel K, and (ii) additional improvement that do not exceed 9,000 square feet of gross building area. The Owner(s) of the Pad Site A, Pad Site B and the Building Expansion Area shall pay its (their) proportionate share of maintenance costs in accordance with the provisions hereof, including Section 3(c) hereof, i.e., any additional gross building area shall be taken into account in determining the cost sharing ratio pursuant to Section 3(c) hereof.

**Section 6. Assignment, Resubdivision and Indemnification.**

(a) Assignment. Any Owner of a Parcel may assign, on a non-exclusive basis, any and all of its rights, powers and reservations contained herein to any person or entity occupying or using at least sixty thousand (60,000) net leasable or usable square feet of space on such Owner's Parcel, provided such person or entity assumes, in writing, the duties pertaining to the particular rights, powers and reservations assigned. Any assignment and assumption made under this Section 6(a) shall be in recordable form and shall be recorded among the Land Records at the expense of the Owner making the assignment. No such assignment shall relieve the assigning Owners from liability for its obligations under this Agreement.

(b) Resubdivision of Parcel K. In the event Parcel K is legally and formally resubdivided of record and/or an association of tenants is established to maintain the common areas in Parcel K, such association or the Owner of one of the resubdivided parcels

shall be assigned and deemed to assume the maintenance responsibilities of the Owner of Parcel K hereunder.

(c) Indemnification. Each Owner (the "Indemnifying Owner"), by accepting a conveyance of title to its Parcel, hereby indemnifies and agrees to hold each of the other Owners (the "Indemnified Owner") entirely free and harmless from all liability, damages, costs, claims or demands of any kind or character whatsoever which may be made against the Indemnified Owner as a result of, or arising out of, ( i ) the death or bodily injury of any individual or any damage to property caused by the willful or negligent acts or omissions (where, in the case of an omission to act, applicable law or this Agreement imposes a duty to act) of the Indemnifying Owner, its agents, officers or employees or any individuals acting at the direction of the Indemnifying Owner or whose services are contracted by or on behalf of, or for the benefit of, the Indemnifying Owner, but only to the extent such acts or omissions relate to or arise out of this Agreement, (ii) the Indemnifying Owner's failure or refusal to comply with or abide by legal requirements in connection with the performance of work under this Agreement, (iii) construction undertaken by the Indemnifying Owner pursuant to this Agreement, or (iv) maintenance undertaken by the Indemnifying Owner pursuant to this Agreement. The foregoing indemnity and hold harmless agreement shall apply to any claim or action brought by a private party or by a governmental agency or entity under any statute or case law now or hereinafter in effect. Notwithstanding the foregoing to the contrary, if the Indemnifying Owner shall be a state or local governmental entity or an agency or other instrumentality of any such entity, then, except as permitted by applicable law, the indemnification obligation of such Owner provided for in this Section 6(c) shall be limited to

available insurance proceeds; provided, however, that this limitation on any such Indemnifying Owner's indemnification obligation shall not affect in any manner whatsoever the Indemnified Owner's right to pursue a claim or claims for damages against such Indemnifying Owner for the matters set forth in this paragraph.

**Section 7. Mutuality, Reciprocity; Runs with Land.** All covenants, conditions, restrictions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every portion of the Parcels and shall create mutual, equitable servitudes upon every portion of the Parcels in favor of every other portion thereof; shall create reciprocal rights and obligations between the respective Owners of all of the Parcels and privity of contract and estate between all grantees of said portions, their heirs, successors and assigns; and shall, as to the Owner of each Parcel, its heirs, successors and assigns, operate as covenants running with the land, for the benefit of the Owner of the other Parcels.

**Section 8. Condemnation.** In the event of the condemnation of all or any portion of the Parcels or the buildings located thereon, that portion of the award attributable to the value of any land within any Parcel so taken shall be payable only to the Owner of the portion condemned. Unless the remaining land of such Owner is rendered unusable by such condemnation, or all of the property of such Owner is taken, the Owner shall, subject to the rights of any lender or other party secured by a mortgage or deed of trust on the affected Parcel, hold such amount of the award in trust as shall be necessary to restore to the extent practical, with due diligence, the remaining Access Easements, Parking Areas and Utility Facilities on such Owner's Parcel to an integrated whole, so that the same may be continued to be used for their designed purposes as provided herein. If any of the funds are not

required to restore the Access Easements, Parking Areas and Utility Facilities, the same shall be retained by the Owner of the taken property. No claim on such award shall be made by the Owner of any other Parcel; provided, however, all other Owners may file separate collateral claims with the condemning authority, over and above the value of the land within the Parcel so taken, to the extent of any damage suffered to their respective improvements or Parcel resulting from the severance of the appurtenant facilities so taken.

**Section 9. Destruction.** In the event of any damage to or destruction of any portion of the Access Easements, Parking Areas or Utility Facilities occasioned by fire or other casualty, the Owner of the Parcel affected by such damage or destruction shall restore or repair the damaged or destroyed area with due diligence, so that the same may be continued to be used for their designed purposes as herein provided. A default hereunder by any Owner required to restore or repair shall give rise, in addition to any other remedies provided for hereunder, to the self help remedy provided for in Section 11(b) hereof. If any building upon a Parcel is damaged or destroyed by fire or other casualty, the Owner of the property upon which the building was located shall, subject to the rights of tenant(s) under its (their) lease(s) and any lender or other party secured by a mortgage or deed of trust on the affected Parcel, promptly either restore the building or demolish the building and plant or pave the area upon which the building was located.

**Section 10. Amendment and Termination.** This Agreement may be amended or terminated only by a written document signed by all of the Owners and the holders of any mortgage or deed of trust on the Parcels, or any portion thereof, their respective representatives, successors or assigns but no such amendment or termination shall affect a

tenant's Tenant Rights as provided in Section 4(c) unless consented to by the tenants benefitted by any Tenant Rights. Any amendment or termination of this Agreement shall become effective only at such time as it is recorded among the Land Records.

**Section 11. Enforcement/Right of Self Help.**

(a) **Enforcement.** Any violation or breach of any restriction or obligation herein contained, which violation or breach continues for twenty (20) days after notice of such violation or breach is given, if no emergency exists, or in an emergency situation, immediately or as soon as appropriate with such notice as is reasonable under the circumstances, shall give any non-breaching party (including, if the breach relates to Section 4(c) hereof, any tenant who is a third party beneficiary pursuant to Section 4(c) hereof) the right to prosecute a proceeding at law or in equity against the person or persons who have violated or breached, or are attempting to violate or breach, any of the provisions of this Agreement, to enjoin or prevent them from doing so, to cause such violation or breach to be remedied or to recover damages for such violation or breach. The delay, omission or failure of any Owner (or any tenant who is a third party beneficiary pursuant to Section 4(c) hereof) to enforce any provision herein contained shall in no event be deemed to be a waiver of such Owner's (or tenant's) right to do so thereafter nor of the right to enforce any other restriction. Any monetary judgment recoverable hereunder shall include interest at the rate of 10% per annum from the earlier of the date such sum should have been paid or the date such judgement is entered until paid. No violation, default or breach by any party hereunder shall result in the termination, extinguishment, divestiture or forfeiture of any easement granted hereunder.

(b) Right of Self Help. If the Owner of a Parcel responsible for maintenance or restoration hereunder (the "Defaulting Owner") fails to perform its obligations in accordance with the requirements contained herein, any other Owner entitled to use the affected area, as the case may be (the "Nondefaulting Owner") shall, except in the event of an emergency threatening human safety or property, or a condition preventing the use of any easement created by this Agreement, give notice to the Defaulting Owner of the acts or omissions complained of, and the Defaulting Owner responsible for such maintenance or construction shall then have twenty (20) days to cure the deficiency or, if the deficiency cannot reasonably be cured within twenty (20) days, to commence to cure such deficiency and thereafter diligently continue and conclude such work as may be necessary to cure that deficiency. If the Defaulting Owner fails to so cure a deficiency, or in the event of a condition threatening human safety or property or a condition preventing the use of any easement created by this Agreement, the Nondefaulting Owner may, upon such notice, if any, to the Defaulting Owner as may be reasonable under the circumstances, undertake such work as is necessary to cure that deficiency. The cost to the Nondefaulting Owner of performing the Defaulting Owner's maintenance or restoration obligations less the share thereof (if any) to be borne by the Nondefaulting Owner (and the share (if any) of any other Nondefaulting Owner) in accordance with the other provisions of this Agreement shall be paid by the Defaulting Owner within 30 days after receipt of the Nondefaulting Owner's bill therefore. Any such bill not paid when due shall be the personal obligation of such Owner, shall accrue interest at twelve percent (12%) per annum and shall also be a charge on the land and a continuing lien upon the Parcel of such Owner, enforceable, at law or in equity,

provided such lien shall be subordinate to any bona fide first lien deed of trust, now or in the future, encumbering such Parcel without the necessity of any further action by any party.

**Section 12. Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title or interest in or to the Parcels is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in said real property.

**Section 13. Governing Law.** The provisions of this Agreement shall be governed by the laws of the State of Maryland.

**Section 14. Force Majeure.** Each party shall be excused from performing any obligation or undertaking provided for in this Agreement (except any obligation to pay any sum of money payable hereunder) for so long as such performance is prevented, delayed or hindered by reasons beyond its control, such as extreme weather, casualty, or Act of God.

**Section 15. Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

**Section 16. Tenders of Notice.** All tenders and notices required hereunder shall be made and given in writing by (a) hand delivery with a signed receipt at sender's expense; or (b) Federal Express or other nationally recognized overnight courier, prepaid at sender's expense; or (c) United States Certified Mail, Return Receipt Requested, postage prepaid; to an Owner at the address provided for below; and shall be effective as of the date of personal

delivery or the signed receipt of a delivery by Federal Express or other nationally recognized overnight courier or upon three (3) days after deposit in the United States Mail, as the case may be. Initially, notices to Kentlands ' Limited Partnership shall be addressed as follows:

If to Owner:            Kentlands Limited Partnership  
                             c/o Beatty Development Corp.  
                             7927 Jones Branch Drive  
                             McLean, Virginia 22102  
                             Attn : Guy E. Beatty  
   and C. Scott Cregger

with a copy to:        Hazel & Thomas, P.C.  
                             3110 Fairview Park Drive, Suite 1400  
                             Falls Church, Virginia 22042  
                             Attn : Benjamin F. Tompkins , Esq.

Additionally, it is contemplated that Maryland State Retirement and Pension Systems may acquire Parcel K, and upon the recordation of a deed among the land records of Montgomery County so conveying Parcel K, notices to the Maryland State Pension and Retirement Systems shall be addressed as follows:

To:                        La Salle Advisors Limited Partnership  
                             100 East Pratt Street, 20th Floor  
                             Baltimore, Maryland 21202  
                             Attention: George W. Duke

with copies to:        Harriet B. Granet , Esquire  
                             General Counsel/Assistant  
                             Attorney General  
                             Office of the Attorney General  
                             Maryland State Retirement and  
                             Pension Systems  
                             300 West Preston Street, 7th Floor  
                             Baltimore, Maryland 21201

and to:                  Vernon S. Lynch III, Esquire  
                             Tydings & Rosenberg LLP  
                             100 East Pratt Street  
                             Baltimore, Maryland 21202

A copy of every notice of default which any Owner gives to another Owner shall be sent simultaneously to such other Owner's mortgagee(s), provided the Owner giving such notice has been furnished with the name and address of such mortgagee(s), and the non-defaulting Owners shall accept performance or cure by such mortgagee(s). Any such mortgagee shall have a reasonable period (in no event, other than an unavoidable delay, to exceed sixty (60) days) to comply with the demand set forth in said notice in the same manner as the Owner to whom such notice is directed, and the party giving such notice shall accept compliance therewith by such mortgagee in the same manner as if performed by the Owner to who notice is directed. Each party hereto may change its addresses for notice provided above at any time by notice to the other party in accordance with the provisions of this Section. Additionally, copies of any notices to an Owner alleging a default under Section 4(c) hereof shall also be sent simultaneously to the tenant whose "Tenant Rights" have allegedly been breached or violated or which impact a Tenant Right, provided such Tenant has provided the notifying Owner with its notice address for such purpose.

**Section 17. Miscellaneous.**

(a) **No Relationship of Principal and Agent.** Neither anything contained in this Agreement nor any acts of the Owners shall be deemed or construed by any Owner or Owners or any third party to create the relationship of principal and agent or of limited or general partners or of any association between or among any of the Owners.

(b) **Easements Benefit Tenants, Etc.** Any easement or right of entry created or established in this Agreement for the benefit of an Owner shall be for the benefit not only of such Owner but also for the benefit of any tenants, licensees, invitees (including agents

and employees of governmental authorities), officers, directors, employees, agents, concessionaires and contractors of such Owner or of any tenant whom such Owner or tenant shall permit to use such easement or right of entry, but no tenant (except pursuant to an assignment pursuant to subsection (c) below), licensee, invitee, officer, director, employee, concessionaire, agent or contractor of such Owner or tenant shall have any cause of action or right to enforce the easement or right-of-way.

(c) Assignment of Rights to Lessees and Mortgagees. The Owner of a Parcel may, without the necessity of conveying title to such Owner's Parcel, assign or otherwise transfer to any tenant leasing and occupying at least 60,000 net leasable square feet of building improvements on such Parcel, or to a mortgagee of the Parcel, subject to the rights of any then existing first mortgagee, all or any of the rights, privileges, easements and rights of entry, in whole or in part, herein given to such rights to entry, in whole or in part, herein given to such Owner (including any right to make any election, to exercise any option or discretion, to give and receive any notice, to make demands, to be indemnified, to receive estoppel certificates, to perform any work of construction or maintenance and to receive any and all moneys payable to such Owner), and any such tenant may, in turn, assign or otherwise transfer all or any of such rights, privileges, easements and rights of entry to the person secured by a mortgage encumbering such tenant's leasehold estate, and any such tenant or mortgagee may exercise any such right, privilege, easement and right of entry so assigned or otherwise transferred to it to the same extent as if, in each instance, this Agreement specifically granted such right, privilege, easement or right of entry to such tenant or mortgagee. The other Owners shall not be bound to recognize any such assignment or other

transfer, or the exercise or accrual of any rights pursuant to such assignment or other transfer, unless and until such Owners are given written notice of such assignment or other transfer pursuant to notice provisions contained herein. Such notice shall be accompanied by a true and correct copy of the instrument effecting such assignment or other transfer. To the extent such assignment is merely a collateral assignment of the rights, privileges, easements and rights of entry herein given to an Owner, the other Owners shall continue to recognize the assigning Owner as the person exercising all of the rights, privileges, easements and rights of entry herein given to such Owner, except that any notices given hereunder to such Owner shall also be given to the assignee of such Owner. If an Owner gives another Owner a written notice requesting (and the instrument effecting the assignment or transfer provides) that the tenant or mortgagee shall receive copies of notices given under this Agreement to the assignor or transferor, then, if the Owner receiving the notice (or any successor, personal representative, heir or assign of such Owner) shall desire or be required to give a notice (as that term is defined herein) pursuant to this Agreement, and fails to give the notice to such tenant or mortgagee the notice shall be ineffective as to the tenant or mortgagee. However, the failure to give the notice to the tenant or mortgagee or holder shall not constitute a default under this Agreement. Any such tenant or mortgagee to whom rights, privileges, easements or rights of entry are assigned or otherwise transferred pursuant to this Section shall, within 20 days after written request made by the Owner of any other Parcel, execute, acknowledge and deliver to such Owner, or to any existing or prospective purchaser, mortgagee or lessee designated by such Owner, an estoppel certificate containing the statements called for in subsection (e) below, except that (x) the statements called for in clauses ( i ), (ii), (iii), (iv)

and (v) of such subsection need be set forth only to the extent the tenant or mortgagee has actual knowledge of the information required thereby, (y) the other statements called for in such subsection need be made by said tenant or mortgagee with respect to itself only, and (z) the words "the Owner executing such certificate," wherever the same appear in said subsection (e) below shall be deemed instead to refer to the tenant or mortgagee executing such estoppel certificate. Notwithstanding the foregoing, a mortgagee shall not be required to give the estoppel certificate unless and until it has become a mortgagee in possession by virtue of the act of a receiver or trustee appointed by a court of competent jurisdiction or other similar process.

(d) No Third-Party Beneficiaries. Except as herein specifically provided for successors and assigns and certain tenants pursuant to Section 4(c) hereof, no rights, privileges or immunities of any owner shall inure to the benefit of any tenant or other third party, nor shall any tenant or other third party be deemed to be a third-party beneficiary of any of the provisions contained herein.

(e) Estoppel Certificates. Each Owner, by accepting a conveyance of title to its Parcel, agrees at any time and from time to time during the term of this Agreement, within 20 days after written request by any other Owner (the "Requesting Party"), to execute, acknowledge and deliver to the Requesting Party or to any existing or prospective purchaser, mortgagee, tenant or other person designated by the Requesting Party, a certificate stating:

( i ) that this Agreement is unmodified and in full force and effect or, if there has been a modification or modifications, that this Agreement is in full force and effect, as modified, and identifying the modification Agreement or agreements; (ii) whether or not, to the best

knowledge of the Owner executing such certificate, there is any then-existing default hereunder by the Requesting Party in the payment of any sum of money owing to the Owner executing such certificate, and whether or not there is any then-existing default by the Requesting Party with respect to which a notice of default has been given by the Owner executing such certificate (or whether any other event has occurred which with the giving of notice by the Owner executing such certificate or the passage of time, or both, would become a default), and if there is any such default (or other event), specifying the nature and extent thereof; (iii) whether or not there are any sums which the Owner executing such certificate is entitled to receive or demand from the Requesting Party, and if there is any such sum, specifying the nature and extent thereof; (iv) whether or not the Owner executing such certificate holds a lien, whether or not perfected, against the Parcel of the Requesting Party pursuant to any provision hereof, and if so the amount thereof; (v) whether or not the Owner executing such certificate has given any notice making a demand or claim hereunder against the Requesting Party which has not yet been discharged or otherwise resolved, and if so, a copy of such notice shall be delivered with the certificate; (vi) whether or not the Owner executing such certificates has made any then-outstanding assignment of rights, privileges, easements or rights of entry pursuant to subsection (c) above or otherwise, and if so, identifying such assignment; and (vii) the current address or addresses to which notices given to the Owner executing such certificate are required to be sent under the terms contained herein.

(g) Transfer of Owner's Interest. If an original Owner of a Parcel named in this Agreement, or any successor Owner of a Parcel, conveys or otherwise disposes of the

Parcel, then upon such conveyance or other disposition all liabilities and obligations on the part of the Owner of the Parcel under this Agreement which accrue after such conveyance or disposition shall cease and terminate and each successor Owner of the Parcel shall, without further agreement, be bound by the covenants and obligations under this Agreement applicable to the Parcel, but only as to matters arising during the period of the successor Owner's ownership of the Parcel. This subsection shall not be construed as a release of any lien against a Parcel that arises pursuant to the terms contained herein.

(h) No Personal Liability of Owner. The obligations of any Owner hereunder are intended to be binding only on the assets of such Owner and shall not be personally binding upon, nor shall any resort be had to, any of its employees, officers, directors, trustees, its investment manager, general partners, managers or any employees or agents of the foregoing parties.

Section 18. Non-Merger. The reciprocal rights, obligations, covenants and easements set forth herein shall continue in existence notwithstanding any common ownership of the Parcels and such common ownership shall not result in the application of the doctrine of merger or the termination of any such rights, obligations, covenants or easements.

Section 19. Consent. Principal and the Principal Trustees hereby consent to the terms and provisions of this Agreement and hereby subordinate the lien of the Principal Deed of Trust to the obligations, covenants and easements granted or set forth herein except with respect to any monetary lien that arises pursuant to the provisions hereof.

It is expressly understood that the lien of the Principal Deed of Trust shall remain in full force and effect as to the land conveyed by such trust, subject to the above subordination.

[SIGNATURE PAGES TO FOLLOW]

WITNESS the following signatures and seals:

KENTLANDS LIMITED PARTNERSHIP, a Virginia  
limited partnership

By: Beatty Leasing and Development, Inc., a Virginia  
corporation, its general partner

By: C. Scott Clegg  
Its: PRESIDENT

STATE OF Maryland  
COUNTY OF Baltimore to wit:  
city

I, the undersigned, a Notary Public in and for the County and State aforesaid, do  
hereby certify that C. Scott Clegg as PRESIDENT of Beatty Leasing and  
Development, Inc., a Virginia corporation, as General Partner of Kentlands Limited  
Partnership whose name is signed to the foregoing Agreement, has personally acknowledged  
the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 30<sup>th</sup> day of September, 1997.

My commission expires:

2-1-98

[Signature]  
Notary Public

SIGNATURE PAGE TO RECIPROCAL EASEMENT AGREEMENT

  
ROBERT L. GORHAM, TRUSTEE

STATE OF District of  
COUNTY OF Columbia, to wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Robert L. Gorham, Trustee, whose name is signed to the foregoing Agreement, has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 30 day of September, 1997.

My commission expires:

5/31/98

  
Notary Public

  
DAVID M. BOND, TRUSTEE

STATE OF District of  
COUNTY OF Columbia, to wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that David M. Bond, Trustee, whose name is signed to the foregoing Agreement, has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 30 day of September, 1997.

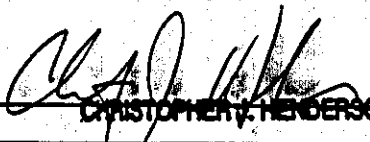
My commission expires:

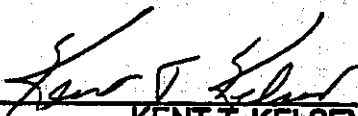
5/31/98

  
Notary Public

SIGNATURE PAGE TO RECIPROCAL EASEMENT AGREEMENT

PRINCIPAL LIFE INSURANCE COMPANY

By:   
Name: CHRISTOPHER J. HENDERSON, Counsel  
Title: \_\_\_\_\_

By:   
Name: KENT T. KELSEY  
Title: COUNSEL

STATE OF Iowa  
COUNTY OF Polk, to wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Christopher J. Henderson and Kent T. Kelsey, whose names as Counsel and Counsel, respectively, of Principal Life Insurance Company signed to the foregoing Agreement, have personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 26<sup>th</sup> day of September, 1997.

My commission expires:



  
Notary Public

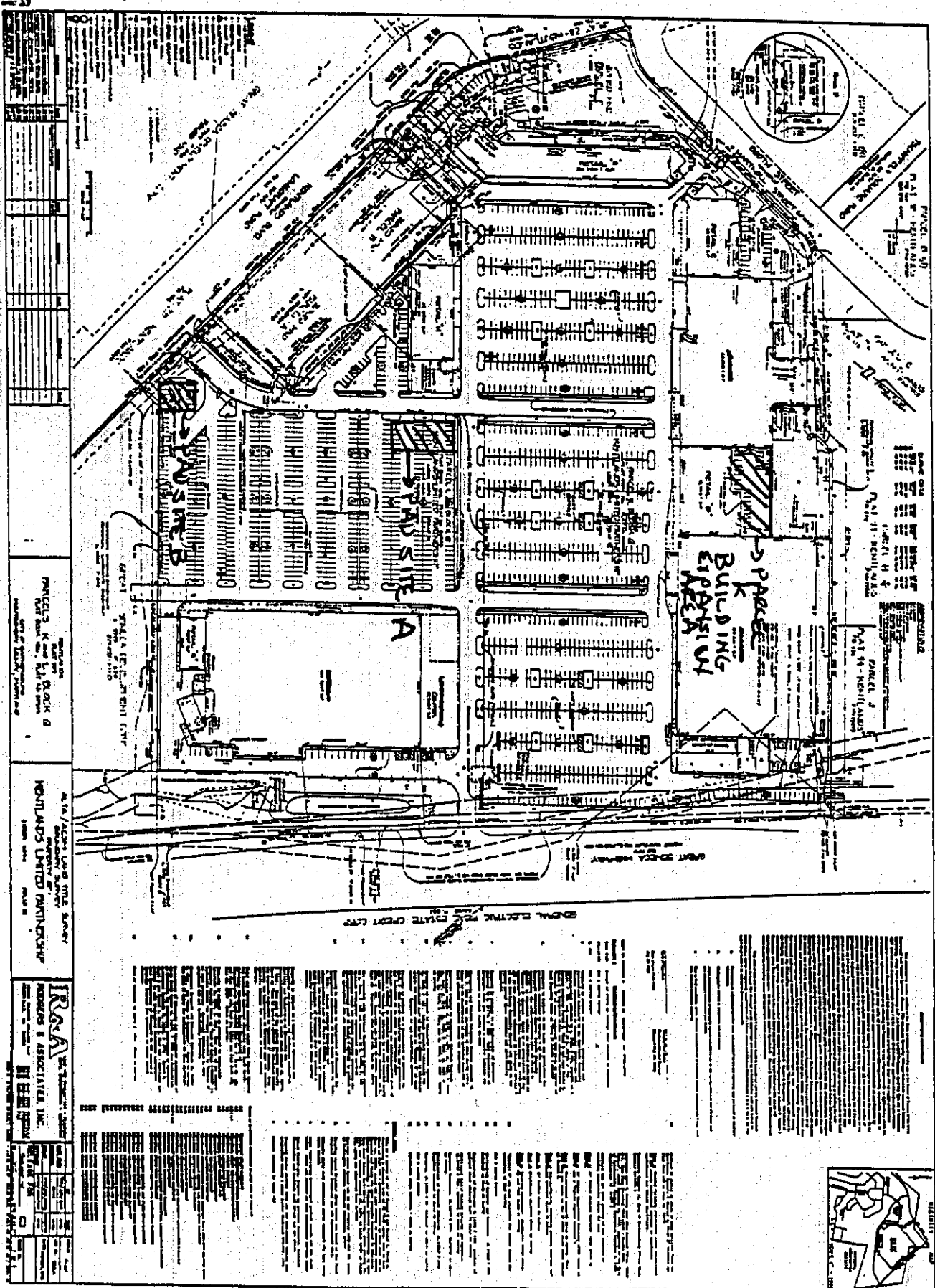
**Exhibit A**

**ALTA Survey for Parcels K and L**



**Exhibit B**

**Plat Showing Pad Site A, Pad Site B  
and Building Expansion Area on Parcel K**



PROJECT 3 N. 100' BLOCK D  
NOT FOR CONSTRUCTION

ALTA/ACORN LAND TRUST  
NON-PAID UNITED PARTNERSHIP

IRCA  
REGISTERED: 1982  
REGISTERED: 1982  
REGISTERED: 1982

REGISTERED: 1982  
REGISTERED: 1982  
REGISTERED: 1982

**LOWE'S COMPANIES, INC.**  
**Jeffrey E. Gray, Senior Corporate Counsel**

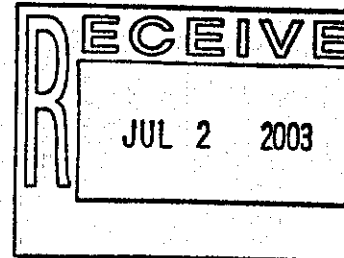
P.O. Box 1111, North Wilkesboro, NC 28656

Phone- (336) 658-2280 Fax (336) 658-3262

E-mail address: [jeff.e.gray@lowes.com](mailto:jeff.e.gray@lowes.com)

Secretary: Brenda E. Patrick Phone: (336) 658-3343

*(If you have problems with this transmittal, please call Brenda at the above listed number.)*



**FACSIMILE TRANSMISSION COVER SHEET**

DATE: July 2, 2003

SUBJECT: Gaithersburg, MD

TO: Mayor Sidney A. Katz

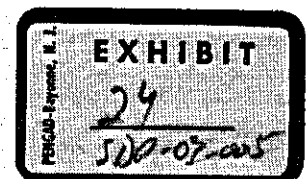
FAX NO: 301-948-6149

NUMBER OF PAGES INCLUDING COVER SHEET: 3

**REMARKS:**

Original VIA UPS Next Day Air

The information contained in this facsimile message, and in any accompanying documents, constitutes confidential information which belongs to Lowe's Companies, Inc. and its subsidiaries. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient of this information, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on this information, is strictly prohibited. If you have received this facsimile message in error, please immediately notify us by telephone to arrange for its return to us. Thank you.





Improving Home Improvement

REAL ESTATE DEPARTMENT

Box 1111, North Wilkesboro, NC 28656  
(Street Address) - Highway 268 East, North Wilkesboro, NC 28659  
E-Mail: Robin.P.Nickles@Lowe.com

Phone: 336/658-4688  
Fax: 336/658-3643

July 2, 2003

By: Federal Express and Facsimile: (301) 948-6149

Mayor Sidney A. Katz  
City Hall  
31 S Summit Ave  
Gaithersburg, MD 20877

Re: Amendment to schematic development plan SDP-03-005 known as Kentlands Section 1, Parcel L, Block Q, located at 317 Kentlands Boulevard, seeking a 20,000 square foot increase in building area and the elimination of 150 available parking spaces (the "Amendment").

Dear Mayor Katz:

I write you today on behalf of Lowe's Home Centers, Inc. ("Lowe's"), which currently operates a store in the Kentlands Square Shopping Center (the "Shopping Center") pursuant to a lease dated July 15, 1991, as amended from time to time, between Lowe's and the landowner (the "Lease"). The Planning Commission of the City of Gaithersburg recommended approval of the above referenced Amendment request during the Planning Commission meeting held on June 18, 2003. As one of the largest tenants in the Shopping Center, Lowe's would like to renew its objection to the Amendment.

As you are aware, the Amendment contemplates the elimination of 150 currently existing parking spaces serving the Lowe's store in the Shopping Center while at the same time adding 20,000 square feet of new restaurant and retail space. By removing 150 existing spaces, while at the same time adding 20,000 square feet of new restaurant and retail space, the Amendment would bring the available off-street parking 226 spaces below that which is required by Section 24-218 of the Code of Ordinances of the City of Gaithersburg, Maryland.

Irrespective of the analysis prepared by the applicant's consultants, Lowe's practical experience in operating in the Shopping Center suggests that the proposed parking reduction, combined with the elimination of access points and access drives serving the Lowe's store, will have significant and harmful effects on the safety and operation of the parking lot. In fact, these objective concerns were, in part, the reason for the insertion of provisions in the Lease

precluding the landowner from making such a reduction in the available parking. Specifically, the Lease provides that "[t]he parties agree that Landlord shall not change any of the Common Area Parking, Primary Parking, access or other Common Facilities, such as lighting and drainage, without the express written permission of Tenant in advance of such a change." Lowe's has not provided any such permission for the contemplated drastic change to the Shopping Center.

During the June 18<sup>th</sup> Planning Commission meeting, several Commission members expressed their hope that the parking issues regarding the Amendment would be resolved prior to the July 7, 2003 meeting of the City Council. By way of this letter, Lowe's would like to make it clear to the City Council that Lowe's parking concerns have not been addressed to Lowe's satisfaction. Lowe's strongly opposes the reduction in parking and access proposed by the Amendment, and remains prepared to enforce its rights under the Lease to prevent the implementation of the Amendment by the landowner. In the event that the City Council decides to approve the Amendment, Lowe's asks that any such approval be conditioned on the landowner complying with the provisions of the Lease and receiving the written approval of Lowe's prior to proceeding any further with their development plans. This condition would be in conformance with the contents of the letter sent by John Collich, Senior Vice President of Saul Centers, Inc., to Dan Janousek dated July 1, 2003, wherein Mr. Collich assured Mr. Janousek that Saul Centers had no intention of violating the provisions of the Lease. If you have any questions at all about this matter, I can be reached at the number shown above.

Very truly yours,

  
Robin P. Nickles  
Vice President, Retail Facilities Management

cc: John Collich, Senior Vice President  
Saul Holdings Limited Partnership  
7501 Wisconsin Avenue, Suite 1500  
Bethesda, Maryland 20814-6522

\\bal\4413\Lowe's\Saul Centers, Inc\City Council\Katz.doc

# SAUL CENTERS, INC.

7501 Wisconsin Avenue, Suite 1500, Bethesda, Maryland 20814-6522  
(301) 986-6200

July 2, 2003

Via: Hand Delivery

Mr. David Humpton  
City Manager  
City of Gaithersburg  
31 S. Summit Avenue  
Gaithersburg, Maryland 20877

Re: SDP-03-005

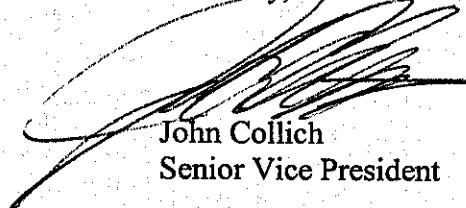
Dear Mr. Humpton:

To address some of the concerns raised regarding the above Schematic Development Plan, we offer the following response. We are interested in developing a street edge at the Kentlands Boulevard entry to our property, however the property is currently encumbered by a lease agreement with Lowe's Home Improvements, Inc. ("Lowe's") and a reciprocal easement agreement with Kentlands Retail Inc. ("Adjoining Owner"). Those agreements permit the development of Site B up to 6,000 square feet. In order for us to develop the street edge with Sites C, D, and E, we are required to amend our agreements with Lowe's and the Adjoining Owner, which will require their consent. It is our experience in real estate ownership that leads us to believe, over time, we will prevail in the "ultimate" plan which may require phasing of the street edge development.

It is our desire that the City Council concurrently approve SDP-03-005 and SDP-03-004 so that we may move forward immediately with site plan approval and development of the mixed use office retail development (SDP-03-004) and Site B containing up to 6,000 square feet of building area (SDP-03-005). Thereafter, we will continue our dialog with the Adjoining Owner and Lowe's for the development of the balance of the street edge.

Mr. Humpton, we appreciate your consideration of the above and look forward to increasing our investment in the City of Gaithersburg. Should you have any questions, please feel free to contact me at (301) 986-6134.

Sincerely,



John Collich  
Senior Vice President

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JC/jnf

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